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EXAMINATION OF ELECTRONIC GOODS AND PRIVACY AT THE BORDER

ISSUE

The Canada Border Services Agency (CBSA) has been invited to appear before the Standing Committee on Access to Information and Ethics as part of an exploratory study of Canadians' privacy at airports and borders. The Committee is interested in related policies and guidance that may affect their privacy, particularly when they are travelling to the United States. The Committee has also expressed interest in any policies or guidance related to the examination of electronic devices at the border.

BACKGROUND

A CBSA Operational Bulletin (PRG-2015-31 Examination of Digital Devices and Media at the Port of Entry – Guidelines) provides guidelines that define legislative and policy limitations placed on conducting examinations of electronic goods at the border:

Legislative Limitations

- Examination of digital devices and media must **only** be performed with a clear nexus to administering or enforcing CBSA-mandated program legislation that governs the cross-border movement of people and goods, plants and animals. Officers shall not examine digital devices and media with the sole or primary purpose of looking for evidence of a criminal offence under any Act of Parliament.

Policy Limitations

- Examinations of electronic devices should be performed only if there are indicators that evidence of a contravention may be found on the device.
- Border Services Officers are instructed to disable wireless and Internet connectivity (i.e. set to airplane mode) to limit the ability of the device to connect to remote hosts or services.
- Initial examinations of digital devices and media should be cursory in nature and increase in intensity based on emerging indicators.

Note: In the first quarter of 2017-2018 CBSA responded to 3 complaints received by the Office of the Privacy Commissioner (OPC), all relating to Border Services Officers conducting examinations of travellers' electronic goods at Canadian airports. In June the OPC sent a number of follow up questions and CBSA responded in July. CBSA ATIP has indicated they anticipate receiving additional questions related to these 3 complaints.

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TALKING POINTS

- Border Services Officers are trained to conduct all border examinations with as much respect for privacy as possible. The Canada Border Services Agency is committed to maintaining the balance between an individual's right to privacy and the safety and security of Canadians.
- The *Customs Act* [paragraph 99(1)(a)] allows Border Services Officers to examine any goods that have been imported into Canada on a no-threshold basis (i.e. without reasonable grounds) in order to ensure compliance with our laws. A "good" is defined as any document in any form, and therefore includes electronic media and their content.
- To date, courts of law in Canada have upheld the inclusion of electronic devices and their content in the definition of "good" under the *Customs Act*.
- The *Immigration and Refugee Protection Act* [subsection 139 (1)] allows for the search of luggage, personal effects and/or conveyance where there are reasonable grounds to believe that the person has not revealed their identity or has hidden, on or about their person, documents that are relevant to their admissibility; or has committed, or possesses documents that may be used in the commission of people smuggling, human trafficking, or document fraud.
- The Canada Border Services Agency's operational bulletin on the examination of digital devices is a matter of public record, and explains current policies. While the legislation does not require that a legal threshold be met before the examination of an electronic good is conducted, it is Canada Border Services Agency's policy that it should not be done as a matter of routine. In fact, Border Services Officers are instructed not to do so unless there are indicators that evidence of a contravention may be found on the device.
- Individuals also have the obligation [section 13 of the *Customs Act*] to present and open their goods if requested to do so by a Border Services Officer. Because a password can be required to open and examine documents on an electronic device, it can be compelled to allow for the traveller's obligations to be fulfilled.
- Border Services Officers shall only examine what is stored within a device (i.e. what is being imported) and may only request passwords required to gain access to information or files if the information or file is known or suspected to exist within the digital device or media being examined.
- The examination of electronic goods uncovers a range of Customs-related offences ranging from electronic receipts proving that goods were undervalued or undeclared, to the interception of prohibited goods contained within the devices themselves (child pornography, obscenity, etc.).

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- The Canada Border Services Agency worked with the Office of the Privacy Commissioner of Canada on the publishing of the fact sheet, *Your Privacy at Airport and Borders*, and also published its own outreach document, *What to Expect: Secondary Services and Inspections*.
- The Canada Border Services Agency is not in a position to comment on the United States' legislation or policies with respect to the examination of electronic goods for travellers entering the United States.



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Criminal Investigations Operations Section

Digital Forensic Unit

Standard Operating Procedures

April 2017

Version 1.0

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Effective date

These Standard Operating Procedures (SOPs) will take effect on April 1, 2017.

Part 1: Introduction

1.0 General

- 1.0.1 The purpose of these Standard Operating Procedures (SOPs) is to ensure that CBSA Enforcement and Intelligence Division staff (E&I staff) conducting examinations of seized or detained digital devices and media do so:
- within their legislative authorities,
 - in accordance with Criminal Investigations' / Enforcement and Intelligence program's prioritization policy, and
 - in a consistent and efficient manner to identify, examine, analyse, preserve and report on potential digital evidence of contraventions or offenses against Canada's border related regulations and legislation.
- 1.0.2 These SOPs shall be adhered to by all Digital Forensic Unit (DFU) personnel conducting examinations or handling digital devices and media. These SOPs must be read in conjunction with the [Digital Forensic Investigations Policy](#), Code of Conduct, Values and Ethics, Canadian Charter of Rights and Freedoms, and the Privacy Act.

Part 2: Authorities

2.0 Digital Forensic Investigations Policy

- 2.0.1 The Digital Forensic Investigations (DFI) policy explains the authorities related to digital forensic exams. The policy can be found on Atlas
-
- 2.0.2 All digital forensic examinations and searches must be performed within the proper legislative authorities.

Part 3: Definitions

- 3.0.1 Digital Forensic Investigations (DFI) - The identification, extraction, analysis and preservation of material found in digital devices for evidentiary purposes.



- 3.0.2 Digital Forensic Labs (DFL) – The purpose built lab to conduct digital forensic investigations.
- 3.0.3 Digital Forensic Unit staff (DFU) – E&I staff, Managers and National Coordinator who make up and support all aspects of digital forensic processes, examinations and investigations.
- 3.0.4 Investigator in Charge (IIC) – This is the E&I staff member who is the lead investigator of the investigation.
- 3.0.5 Digital Devices - An electronic device that is capable of receiving, storing, processing or sending digital information.
- 3.0.6 Media - Data storage material divided into numerous categories according to the recording method:
 - 1. Magnetic, such as diskettes, disks, tapes
 - 2. Optical, such as microfiche
 - 3. Magneto-Optical, such as CDs and DVDs
 - 4. Peripheral storage such as hard disks and USB keys
 - 5. Cloud storage, such as backup data or server side data
 - 6. Transient data, such as Wi-Fi transmissions or data packets
- 3.0.7 Metadata – Underlying information, definition or description of one or more aspects of the data; or data about the data. (i.e. GPS coordinates of a photograph)

Part 4: Memberships, Training, and Certifications

4.0 Memberships

- 4.0.1 A list of professional organizations will be submitted annually to the CBSA President by the DFU National Coordinator for DFU staff to acquire professional memberships that are in direct support of a government program.
- 4.0.2 Once the list has been approved by the CBSA President, DFU staff may submit a request to join selected professional organizations. The CBSA acquisition credit card is permitted to be used for this purpose and reference to the annual approval list must be made when the receipts are submitted to Finance.
- 4.0.3 The current list of approved organizations can be obtained from the DFU National Coordinator.



4.1 Curriculum Vitae (CV)

- 4.1.1 All DFU staff are required to have a current curriculum vitae (CV) and the CV is to be included with all forensic reports.
- 4.1.2 The CV must include all training, court appearances whereby accreditation as a forensic expert was acknowledged and any and all conferences, seminars or other continuous learning events.
- 4.1.3 A current copy of the DFU staff member's CV must be forwarded to the National DFU Coordinator at the start of each fiscal year.

4.2 Training

- 4.2.1 DFU staff must strive to maintain their knowledge and expertise with ongoing training and education. DFU staff must participate in a minimum of 60 hours of certified or recognized training within each 12 month period.
- 4.2.2 The training requirements of DFU staff are outlined in the National Training Standard for Criminal Investigators (NTS).
- 4.2.3 All requested training must be entered on the DFU staff members' learning plan in the Employee Self Service Portal (ESS). This must be done in consultation with the National DFU Coordinator and the Regional DFI manager.
- 4.2.4 An e-mail request must be sent to the National DFU Coordinator at forensics@cbsa-asfc.gc.ca for an Expense Approval number (EA#) to confirm training eligibility and forecasted expenditures. The EA# will be sent back to the requester, along with the cost center information required to complete a GC211 and enter an ESS travel request.
- 4.2.5 The DFU Coordinator will compile all training requests and include them within the annual travel submissions for Vice President approval (as per the Treasury Board Directive on Travel, Hospitality, Conference and Event Expenditures). Core NTS courses within the annual T&L training budget will be approved by the VP overseeing T&L. Training requests that exceed the T&L budget, as well as non-core training, workshops and conferences, will be approved by the VP overseeing the DFU. Unless specifically authorized, no expenses are to be incurred for anticipated training until the associated travel is approved.
- 4.2.6 A Training Application and Authorization form (GC211) for the requested training shall be completed with the assigned cost center information and EA# and submitted to the Regional DFI Manager. The Regional DFI Manager shall approve and sign each training request based on operational requirements and the learning plan of each requester. The signed GC211 will then be forwarded to the appropriate cost center authority (National T&L or DFU Coordinator) at NHQ for Section 32 approval and assigned a Funds Reservation Number (FRN). The Section 32 authorized



GC211 will be returned to the requester with the associated FRN for reference. The FRN and the EA# shall both be entered into the ESS Portal and CAS when expenses are entered and reconciled.

- 4.2.7 The requester will then complete a travel request in the Travel section of the ESS portal. Travel and training expenses covered by T&L shall be coded to the T&L cost center. Travel and training covered by CID shall be coded to the CID cost center. Requests submitted in the ESS Portal are recommended by the Regional DFI Manager and then approved by the relevant cost center manager within the Management Self Service (MSS) Portal.
- 4.2.8 For requests for training through the Canadian Police College, the following additional steps are required by the requester:
- a Fill out the CPC application form from the CPC website with the correct cost center information. (Your line manager needs to sign as the supervisor).
 - b E-mail the CPC application form with the GC211 to the correct cost center manager for approval. (either the DFU Coordinator or T&L Coordinator)
 - c Wait for both forms to be returned signed, along with a Funds Reservation Number (FRN) that enables the CPC to invoice the CBSA.
 - d Fill out an FIS form from the CPC website, using the FRN provided above.
 - e E-mail the signed CPC application and the completed FIS form to the CPC registrar.
 - f Enter your travel request into the ESS portal for approval by the cost center manager.
 - g Wait for CPC confirmation that the course will commence and that you have a seat reserved.
 - h Upon course confirmation and travel request approval, book your travel and go. A copy of the completed GC211 must be included with the travel request submission as well as with the acquisition card reconciliation if the card was used to pay for the training.
- 4.2.9 Once the course is completed, the DFU staff member shall prepare a report on the training event to be used by the DFI program for course evaluation purposes. Appendix A - Training Report template.
- 4.2.10 The requester must add the course to their CV and retain copies of any certificates received to forward to the Training and Learning Center Regional Coordinator or if required, to the National DFU Coordinator.
- 4.2.11 Workshops and conferences are not typically included or reimbursed as training within the NTS. Where relevant or necessary for a DFU staff member to attend training at an industry or law enforcement conference or workshop, approvals must be sought in coordination with the DFU



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National Coordinator and the Regional DFU manager. Where possible, expenses for DFU staff to attend workshops and conferences will be approved and reimbursed through DFU O&M funding.

- 4.2.12 Training opportunities that are not included within the DFU NTS will be approved on a case by case basis in coordination between the DFU staff member, the DFU National Coordinator and the Regional DFI manager.

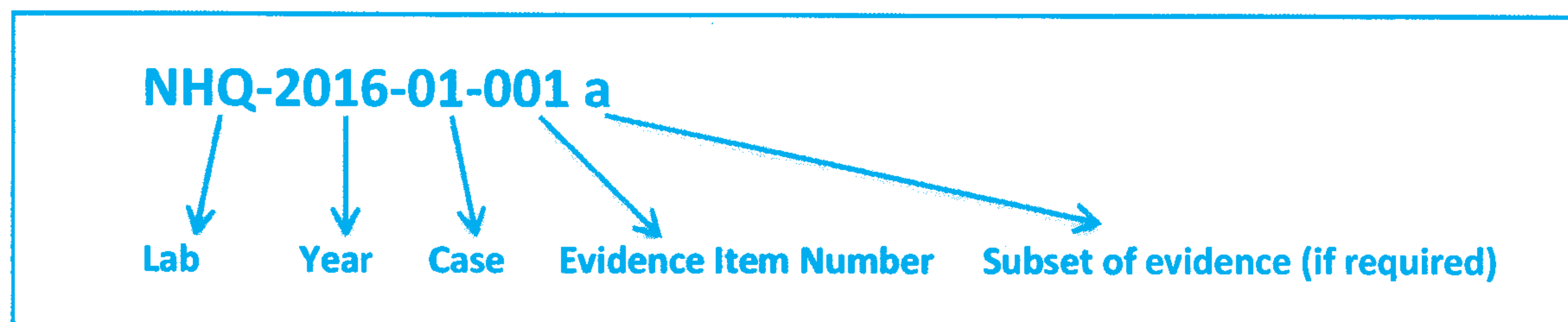
4.3 Certification and Recertification

- 4.3.1 DFU staff who have obtained certification of proficiency in vendor based training shall strive to maintain those certifications as required.
- 4.3.2 Certifications and re-certifications obtained shall be recorded on DFU staff's CV as well as within the Learning Portal.
- 4.3.3 Recertification training shall be included as part of the DFU staff's individual learning plan and recertification shall be completed prior to the expiry date of the certification.

Part 5: Case File Control

5.0 Paper and Electronic Case File

- 5.0.1 In order to track case work, evidence received, file progression and in support of future performance measurement, digital forensic labs must maintain an electronic case log file.
- 5.0.2 A new log entry will be made when a request for forensic services is received.
- 5.0.3 The Digital Forensic Lab (DFL) file number must be unique to each digital forensic lab. The case number would consist of an abbreviation to indicate the forensic lab followed by the current year and the sequential case number. The next subset of numbers would indicate each evidence item received. In the case of items that may contain other evidentiary items, an alphabetic subset would follow.



Digital Forensic Lab	Abbreviation
Vancouver	PAC
Calgary	PRAC



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Winnipeg	PRAW
Windsor	SORW
Niagara Falls	SORN
Toronto	GTA
Northern Ontario	NOR
Montreal	QUE
Atlantic Fredericton	ATLF
Atlantic Halifax	ATLH
Atlantic Newfoundland	ATLN
National Head Quarters	NHQ

5.0.4 The following fields must be tracked within the log file:

1. Date received into lab
2. IIC of investigation and contact information
3. Associated CIIMS or other agency case number
4. Total number of evidence item components received. Components are physical storage devices or media (i.e. 1 cellphone with 1 SD and 1 SIM = 3 components; 1 computer with 3 drives= 3 components)
5. The location of evidence storage - All evidence received must be stored in accordance with the policy on evidence storage
6. Type of case file: Criminal Investigations – Goods, Criminal Investigations – IRPA, Criminal Investigations – Other, Other Division within CBSA, External Partners
7. The relevant legislative offence
8. Results of Examination
9. Priority
10. Disposition

5.0.5 A paper case folder will be prepared for each new case on intake.

5.0.6 The folder will be labelled with the relevant case information, namely CIIMS case number, IIC and DFL case file number

5.0.7 This folder will contain all relevant casework including copies of search warrants, original case notes, the request for examination, the original evidence control sheet and all forensic reports.



- 5.0.8 A case progression sheet or other electronic method shall be used to track the progression of the case in order to clearly see what stage the forensic exam is at.
- 5.0.9 All new evidence items received will have a new DFL file number. If the new evidence that is received is related to another ongoing DFL file, that case will be cross referenced to the new case - not added to the existing case.
- 5.0.10 Once all digital forensic work is completed, the IIC will receive the paper file, which is to be saved in CIIMS with the case file. The DFU staff member should keep a copy of the case file for reference if required.
- 5.0.11 The evidence control sheet (K129) must accompany the evidence when it is moved from the lab and the DFU staff member shall maintain a copy of the original evidence control sheet.

5.1 Managing Workload and Prioritization

- 5.1.1 DFU staff shall not undertake digital examinations for purposes outside of the mandate of the Criminal Investigations Program as a regular course of practice. As per paragraph 24 of the Digital Forensic Investigations Policy "Prior to initiating an examination when providing assistance to other CBSA areas, or external law enforcement partners, Director/Assistant Director level approval is required to ensure alignment with priorities, legal authorities, and proper resource management".
- 5.1.2 In the event that it is necessary for specialized digital examination assistance to be provided to another CBSA area, or for an external partner, each of these requests for assistance should be dealt with on their own merits with careful consideration of the following:
1. Current Enforcement and Intelligence priorities;
 2. cost recovery for such expenses (if in place);
 3. cost or hours required to bring the file to completion;
 4. amount of time DFU staff will be away from criminal investigations work and regional backlogs;
 5. legislative or regulatory authorities enabling DFU staff to search the digital devices involved; and
 6. opinion of the DFU staff member, on the possibility of the requested examination being successful.

5.2 Recording Activities and Criminal Investigations Information Management System (CIIMS)

- 5.2.1 The Criminal Investigations Information Management System (CIIMS) is the Criminal Investigation Division's primary workload and file management system used for time and resource management



and statistical purposes. File numbers generated within CIIMS are exported weekly to the Agency's accounting system (CAS) to allow investigators to apply their hours worked to specific cases.

- 5.2.2 All time spent on a case by DFU staff regardless of the work performed, is to be recorded on the timesheet in CAS, with references to any related CIIMS file numbers. New CIIMS file numbers should not be created solely to record the activities of DFU staff, with the exception of accounting for time associated with assisting other sections of the Agency or another law enforcement agency, outside the scope of criminal investigations, in which case a new DFU Assistance file should be created. (for information on creating a DFU Assistance case refer to the CIIMS User Manual)
- 5.2.3 DFU staff who conduct examinations of digital devices are not only an important resource for the Criminal Investigations Program, but for the Agency as a whole. As a result, it is extremely important that activities undertaken by DFU staff be accurately captured under the correct activity type to ensure that the type of work and for whom the work is being done can be reported and measured.
- 5.2.4 It is critical that DFU staff refrain from recording time spent on case related work under incorrect Activity Types such as those meant to capture miscellaneous activities such as updating and validating equipment.
- 5.2.5 The Activity Types are a key element in linking the activities undertaken by DFU staff, to Agency goals and priorities, and making budgetary and resource allocation decisions based directly on performance.

5.3 Entry into CIIMS

- 5.3.1 The CIIMS User Manual provides instructions on entering digital forensic information and can be viewed
- 5.3.2 All digital forensic exam information must be entered into CIIMS within the appropriate case file as per the instructions provided in the CIIMS User Manual.
- 5.3.3 All reports shall be added to CIIMS as documents within the appropriate case.

Part 6: Evidence control

6.0 Evidence Control Policy

- 6.0.1 All evidence under the control of DFU staff and held within digital forensic labs shall be maintained as per policies related to evidence control.
- 6.0.2 The Criminal Investigation Division bulletin with regard to evidence control can be viewed at 01 – 2014: Evidence Rooms – The Control and Safeguarding of Evidence.



- 6.0.3 Chapter 4: Operation, Use and Maintenance Section 12: Control of Seized, Detained, Abandoned and Forfeited Goods outlines the objectives of the policy.
- 6.0.4 A log of all evidence items held within the digital forensic lab is to be maintained by DFU staff members as specified within the Evidence Rooms - Inventory Control and Safeguarding of Evidence bulletin in the section Inventory Control and Access to Documents and Goods.
- 6.0.5 The original exhibit control sheet (Form K129) must accompany all evidence received into the lab for examination. A copy of the original K129 will be returned to the investigator upon intake of items. When the evidence has been returned to the investigator, the original K129 will accompany the evidence and a copy of the K129 will be kept by the DFU staff member.

Part 7: Lab and Equipment

7.0 General

- 7.0.1 Validation of tools and software is a critical component of the forensic lab function. The DFU staff must have confidence that their tools work in the manner in which they are intended and that they can properly attest to this fact in court. Updates and upgrades are to be validated immediately or as soon as is practicable. Only tools or software that is able to produce data or results that can be validated may be used for forensic examinations. Results from validation processes must be able to be reproduced in the same environment using the same methodologies at any time in the future.

7.1 Equipment Validation and Maintenance

- 7.1.1 Regular testing and verification of current and newly acquired equipment, including software is mandatory. Updates to hardware, software and firmware must be performed as soon as possible after an update is made available by the vendor or manufacturer. This is to ensure that the most current technology is being utilized. Most updates are available online from manufacturer websites for downloading and installation.
- 7.1.2 A validation log shall be kept for each item of forensic equipment and or software process used.
- 7.1.3 The validation log shall be maintained within each laboratory to record all versions of updates that are applied to each device or software. This will enable DFU staff to refer to an older version if it becomes necessary in the course of an investigation.
- 7.1.4 The validation log must specify the date on which the validation occurred, the process used to validate and the results of the validation test. The results are valid until the next upgrade in software or change in hardware firmware.



- 7.1.5 Where annual or periodic reminders are not received from equipment vendors regarding the latest version or upgrade, DFU staff are required to complete their own version checking and upgrading on all equipment.
- 7.1.6 Where a renewal or maintenance fee is required to keep a piece of equipment up-to-date and functioning at its best, the DFU staff member shall ensure that the proper information is passed on to the National DFU Coordinator to ensure procurement consistency and budgetary requirements.
- 7.1.7 Each laboratory shall keep a record of all devices and software that are currently in inventory. The inventory record shall show the date the item(s) was acquired, disposed of, item description, model number, serial number, ownership (Regional or NHQ) and for software, the version number.

7.2 Lab Requirements

- 7.2.1 DFU staff shall be equipped with a laboratory that is properly equipped with ergonomically correct workstations, equipment and tools to enable the process of conducting digital forensic examinations and related tasks in a safe and secure environment.
- 7.2.2 Each lab will compile an inventory list that shall be submitted to the National DFU Coordinator at the end of each quarter.
- 7.2.3 The inventory list will account for all items by description and serial number and whether the item was purchased locally or received from NHQ.
- 7.2.4 Forensic labs will be equipped with power backup devices to ensure that digital examination equipment and devices are protected from power surges and brown-outs, and to enable the equipment to be safely and properly shut down in the event of a complete power outage.
- 7.2.5 It is recommended that all new digital forensic labs meet the following minimum laboratory requirements:
 - 1. The total minimum space requirement for a single-person laboratory is 22m². This takes into consideration the following space calculations that will accommodate the tools and equipment required to perform digital forensic (typically three to four computers per DFU staff member).
 - 2. Two single "L" or "U" shaped workstations to accommodate two computers each, with an overall footprint of 2m X 3m each (12m² total).
 - 3. Each lab requires secure storage for seized evidence, forensic tools and spare digital media in at least two upright secure storage systems (Dasco or similar) and two sturdy bookcases, each with a minimum footprint of .5m X 1m (2m² total).
 - 4. Usable work bench space for disassembly and forensic examination and diagnosis with a minimum footprint requirement of .5mX2m (1m² total).



5. To accommodate the 15m² footprint requirements of the above equipment, a single person laboratory will also require an estimated working, walking and sitting space of 7m².
6. The laboratory workspace should be in addition to the personal workstation assigned by the Agency to each individual worker.
7. Digital forensic laboratories which combine more than one staff member are to be increased in size to accommodate at least one additional 6m² workstation per DFU staff member. A laboratory with four staff members will therefore have a base of 22m² and require 3 X 6m² (18 m²) additional space for a total laboratory footprint of 40m².
8. Please see [Appendix B](#) Forensic Lab Equipment for a list of required equipment

7.3 Disposal of Surplus Equipment

- 7.3.1 CBSA is responsible for maintaining records of disposal for all surplus electronic and electrical equipment and e-waste.
- 7.3.2 The disposal of surplus lab equipment shall be in accordance with the policy on disposal which can be found on Atlas
- 7.3.3 The disposal of E-Waste is outlined in the above manual on [Appendix B](#)
- 7.3.4 DFU staff must maintain and report on all instances of tools, equipment or software that goes missing or is otherwise removed from their control. This information is to be included in the inventory log. This includes the loaning or provision to other CBSA areas or external partners. Instances of goods that are not returned within a reasonable or agreed-to time frame must be reported to the Regional DFI manager and the DFU National Coordinator.

Part 8: Digital Forensic Process

8.0 General

- 8.0.1 The following outlines the forensic process as developed over time within the DFU. These Standard Operating Procedures are limited to general processes and basic forensic collection and data acquisition techniques and is not intended as training.



- 8.0.2 Digital forensic can be defined as “analytical and investigative techniques used for the preservation, identification, extraction, documentation, analysis and interpretation of digital data which is stored or encoded for evidentiary and/or root cause analysis”¹.

8.1 Regulatory Examination Assistance

- 8.1.1 DFU staff may provide assistance to front line staff as required, in accordance with the guidelines set out in the *Digital Forensic Investigations Policy (Paragraph 24)*. Assistance provided to front line personnel shall be limited to assisting them in gaining access to the devices, operation of devices and identification of the devices as required. Please refer to the [2016-11-10 – National Communiqué – Reminder: Policy for the Prioritization of Digital Device Examinations by the Digital Forensic Unit](#) for more information.

8.2 Searching Within the Scope of a Warrant

- 8.2.1 DFU staff shall ensure that searches on digital devices are performed within the scope of the warrant and shall be cognizant of the nexus formed between the items being searched for and the allegations presented.
- 8.2.2 DFU staff are responsible for minimizing potential risks of Charter violations and must be able to clearly articulate the rational and reasons for the choices made and processes and tools used in their analysis.
- 8.2.3 DFU staff must narrow the scope of the results generated from an analysis, in order to reduce the amount of over-seizure as much as reasonably possible. The data presented to the IIC will be data that is filtered and tailored to match the data described in the judicial authorization, rather than providing everything that is found on the digital device or media examined.
- 8.2.4 DFU staff shall only provide data that is clearly authorized within the scope of the warrant. Providing complete forensic copies of all data contained within digital devices would, in most scenarios, be considered over-seizure, potentially impacting the court's decisions.

8.3 Search Incidental to Arrest

- 8.3.1 Electronic devices seized incidental to arrest should be searched by the investigating or seizing officer. Searches must be cursory (i.e. not using forensic tools); be directly related to the reason for arrest and be extensively documented. DFU staff may be present to provide technical guidance but

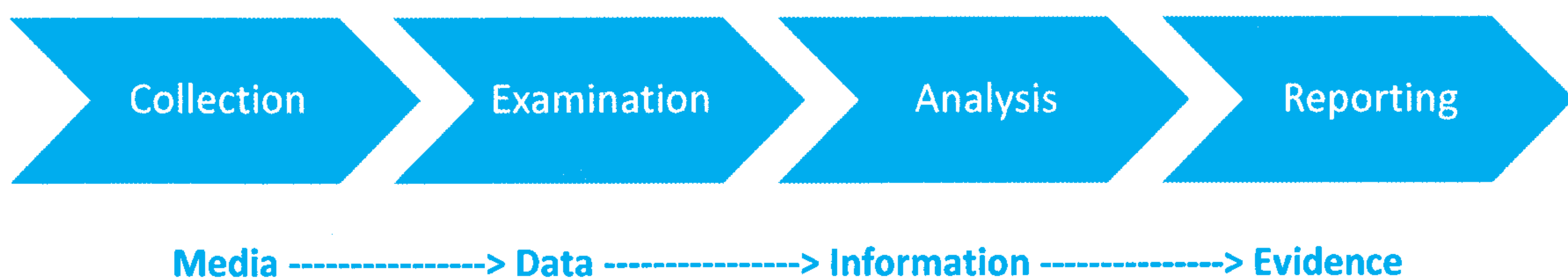
¹ S. H. Van Solms and C. P. Lourens, “A Control Framework for Digital Forensics”, IFIP 11.9, (2006).



should not conduct the search unless absolutely necessary for safety or evidence preservation purposes (ie. exigent circumstances). While doing such examinations, the DFU staff must be cognizant that it is akin to a regulatory examination and that a more extensive search requires a search warrant.

8.4 Work Flow

- 8.4.1 The graphic below illustrates the basic workflow for a digital forensic examination. Each section is further described in the following points:



- 8.4.2 The collection phase refers to the presentation of digital devices for forensic examination. This is defined as media and includes all items received that must be forensically examined to reveal the data contained within. During the collection phase, all media is categorized and documented. Media is obtained during the collection phase by way of consent by owner, search warrant or seizure and detention of goods.
- 8.4.3 The examination phase covers the extraction of any and all data from the media. The goal is to obtain a bit by bit copy of all data when available to allow for a thorough and complete analysis. It is critical to verify that the data copied from the media is, in fact, the same data that is on the media, with no alterations or deletions. This can be verified through the use of hash values. The examination process may include techniques that will alter the original data and the DFU staff member must identify and clearly articulate any process used that could alter the original data on the device.
- 8.4.4 The analysis phase is the systematic discovery of information that is within the scope of the search being conducted. This is directly related to the information required by the requester of the examination. This information is the digital evidence.
- 8.4.5 The reporting phase is the dissemination of the evidence obtained to the requester. The reporting phase may also include a return to any of the previous phases based on the relevance of the evidence obtained.

8.5 Search Warrant Preparation



- 8.5.1 Please consult Criminal Investigations' policy for further details for obtaining and retaining the necessary evidence to successfully prosecute a case.
- 8.5.2 The IIC should make all efforts to determine what types and quantities of digital devices can be expected to be found, with the assistance of DFU staff. Prior to signing of the Information to Obtain (ITO), the presence of computers, digital devices or data storage systems should be determined for each search location. In order to support the search warrant, it is important to articulate why such devices are believed to be within the premises.
- 8.5.3 It is standard practice and necessary to include information regarding the search of computers and digital devices within all Informations to Obtain (ITOs) and search warrants.
- 8.5.4 The wording for "Attachment A – Things to be Searched For" and "Attachment C – Grounds for Belief – Computer Search" as provided in this document, is designed to be included in the appropriate areas within the ITO for the purpose of providing a more complete description of the authorities and procedures for searching computers, digital devices and media to a Judge or Justice of the Peace. While modifications are sometimes required by a Judge or Justice of the Peace and that ITOs and search warrants are to be tailored to the specifics of each case at hand, the technical wording included in this section for "Attachment A – Things to be Searched For" and "Attachment C – Grounds for Belief – Computer Search" of the ITO document have been developed over time with consultation and are highly recommended for inclusion in the appropriate area of the ITO.
- 8.5.5 Beyond the wording of "Attachment A", some additional case-specific details should be included in order to strengthen the link between digital evidence and the offence. For example, "copies of e-mail messages provided by the informer show that the subject counselled his clients using this method of communication so additional correspondence will be searched for."
- 8.5.6 ITOs and search warrants must specify what digital devices are known and sought and what types of information or content are expected to be found within such devices. Additionally, the ITO must specify that metadata (information that is auto-generated by computers) and deleted files will be searched for, analyzed and retrieved as part of the authorized computer search.
- 8.5.7 Only after this information is available can the number of DFU staff required for each search warrant be determined. The number of DFU staff needed will be based on the number of search locations, the amount of digital evidence that could potentially be encountered, and whether or not imaging of digital devices will be performed on site or at the digital forensic laboratory.
- 8.5.8 When a bit-image of the data on the entire hard drive is made in order to conduct further off-site forensic examination, these copies must be reported to the Judge or Justice of the Peace pursuant to section 489.1 and 490 of the Criminal Code.



- 8.5.9 It is important to include information within the ITO regarding the acquisition of live memory and to describe how DFU staff will deal with processes that are running upon arrival at the search warrant site.
- 8.5.10 If a Judge or Justice of the Peace makes amendments to the warrant with respect to the parameters of the search for digital evidence, DFU staff are to be made aware of this as soon as possible before the search, as it may affect the legality of any digital evidence seizure.
- 8.5.11 A reference to the DFU staff member being trained, knowledgeable and having expertise in the area of digital forensics should also be noted within the ITO.
- 8.5.12 Strong consideration is to be made for obtaining a second search warrant for specific or unique instances where the nature of the evidence found is deeper than initially anticipated and is discovered during the execution of the initial search warrant. The Supreme Court of Canada (SCC) R. Vu – 2013 decision specifically mentions a two-stage approach, where a second warrant might include directions on the methods of searching. The SCC also recognized that it is not possible for anyone to know what will be encountered within a computer until the actual examination is started, alleviating the requirement to fully detail the search of a computer in the initial warrant.
- 8.5.13 Information to Obtain “Attachment A - Things to be searched for” suggested wording – [Appendix F](#)
- 8.5.14 Information to Obtain “Attachment C - Grounds for Belief – Computer Search” suggested wording – [Appendix G](#)

8.6 Search Warrant Briefing and Equipment Preparation

- 8.6.1 DFU staff shall rely on the IIC to lead the search warrant briefing and act only as a subject matter expert as required.
- 8.6.2 DFU staff should inform all investigators and any other searchers about the digital device(s) and media technology that they may encounter during a search, so that they will be aware of what may exist and what they may find.
- 8.6.3 DFU staff should also emphasize that all persons encountered at the search locations, be removed from the proximity of potential digital evidence until DFU staff has assessed the scene.
- 8.6.4 DFU staff shall verify that all forensic computers required for the search are sanitized and restored to an original image that includes all required software programs. Upon returning from a search, the forensic computers are again to be sanitized and restored to an original image. This will ensure that only relevant software remains on the device prior to coming into contact with live evidence.
- 8.6.5 The DFU staff search kits are to be stocked and replenished with items that will be needed at the search site. A checkbox formatted list should be maintained within the search kit for ease of reference. This list should be replenished regularly to ensure that it contains updated items and



that out-dated items are removed. Please see [Appendix D](#) for a recommended list of items required.

- 8.6.6 DFU staff are required to indicate that they have read the search warrant as directed by the IIC. DFU staff shall record all pertinent details within their officer's notes.

8.7 Search Entry

- 8.7.1 Officer safety comes first. DFU staff shall follow all established protocols to ensure their safety and the safety of the entire search team.
- 8.7.2 Upon arrival at the search scene, DFU staff should enter the search site along with the IIC, the evidence control officer, police officers (if present) and any other search team members involved in the initial entry.
- 8.7.3 As part of the initial entry team or as soon as feasible, DFU staff will oversee the securing of all devices that have been authorized to be searched by the search warrant, in addition to related evidence.
- 8.7.4 DFU staff will survey the scene and instruct individuals to remove themselves from computers or digital devices and media. Initially, all users should be kept away from keyboards, mice or other input devices while an assessment of hardware, software and resources is being carried out and a strategy is determined. Investigators involved in the initial entry will assist DFU staff in ensuring that all users are kept away from the computers and digital devices until DFU staff determine that they can once again be accessed.
- 8.7.5 DFU staff members are the subject matter experts with respect to examining digital evidence and as a result, all technical questions should be directed to DFU staff. Only DFU staff, or a searcher under the direction of DFU staff, are to access digital devices and media during the execution of a search warrant. Any actions that have the potential to alter, damage or destroy original digital evidence must be performed by DFU staff in a manner that is forensically sound or at the discretion of the DFU staff member.
- 8.7.6 DFU staff must assess the connectivity of the computers/devices on site and determine whether they should or can be disconnected.
- 8.7.7 DFU staff members are responsible for interviewing the network administrators, I.T. staff, and/or user with respect to the digital devices encountered. Assistance for access may be required by these individuals.
- 8.7.8 DFU staff will determine the required techniques to be used to ensure that the search of devices is within the scope of the warrant.



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8.7.9 DFU staff will determine the strategy to be used when encountering systems that are powered on. No devices shall be powered on or off unless directed by DFU staff.

8.7.10 Where a search of digital records belonging to a third party is required, the general practice is to restrict the seizure to electronic copies or printouts of the information contained therein, rather than seizing the digital equipment. However, some exceptions may apply and will be dependent upon the scope of the search warrant and determined by E&I staff on a case by case basis. It is important to keep in mind that in these circumstances, consideration should be given to seek a second warrant for authorization to search devices that were not anticipated by the original warrant.

8.7.11 DFU staff must document all actions within their officer's notes as required.

8.8 Searching for Digital Evidence

8.8.1 Procedures to search for digital evidence may include, but are not limited to the following:



It is important to note that this list is dependent on the type of the case and scope of the search authority.

- 8.8.2 The IIC is to be consulted for suggestion of keywords that, if hit upon, will lead to evidence that is relevant to the investigation and falls within the parameters of the search warrant. This includes:
- 8.8.3 Documentation and/or instruction manuals that are required to assist in the examination or operation of seized devices and media must be documented on the warrant as part of the “things to be searched for”, if there is a possibility that they will be seized.
- 8.8.4 Diagrams should be created to accompany scene photographs taken showing the placement of the digital devices, media or evidence. Photographs are to be taken of the general search area, the screens of the devices, and the front and back of all the devices. Such photographs are critical in demonstrating the condition of the evidence and search location at the time of discovery.
- 8.8.5 It is imperative to note the location where any seized digital device, media or evidence was found in reference to any diagrams that were sketched and whether the device was turned on or off. Based on the scope of the warrant and circumstances, DFU staff will make the appropriate decision on how to seize the device and determine whether a live data acquisition (data captured while the computer is powered on) is required. DFU staff will perform the most appropriate method of device shut down, given the circumstances, once this decision has been made. If it is decided that removing power supplied to the device is the most appropriate method, the power should be disconnected directly from the connected device power cord.
- 8.8.6 When the screen is visible and the computer is ‘on’, the time and date are to be noted and photographed. Any visible software programs that are running are also to be noted and photographed. Icons with locked or keyed symbols should be noted as this may indicate an encrypted volume.
- 8.8.7 If a digital device is found in the ‘off state’, it should not be powered on. If it is a computer that appears to be in the ‘off state’, the searcher should look for blinking lights to indicate hibernation or sleep mode and then try moving the mouse or pressing the ‘shift’ key to restore the screen. Turning a device ‘on’ should be at the discretion of the DFU staff member.
- 8.8.8 If the screen appears as a password protected or locked screen, no attempts should be made by the searcher to gain entry. Instead, DFU staff are to be notified and will make a decision on whether to image the computer on-site, remove the hard drive, or take the entire computer back to the laboratory. It is important that a prompt and thorough search be performed of the immediate area surrounding a password-protected computer to discover written passwords or hints that will lead to the subsequent discovery of the password. It may be appropriate to interview any users that are present for passwords as most users will voluntarily provide access to password protected systems.



- 8.8.9 DFU staff will employ techniques that will minimize data from being written to potential evidence. This includes the use of hardware or software write blockers. Depending on the type of forensic software or tools being used, a write blocker may not always be necessary. DFU staff will determine the most appropriate technique to use.
- 8.8.10 Additionally and where warranted, batteries must be removed from laptops or other mobile devices. Power cables and adapters must be seized to accompany any digital devices seized.
- 8.8.11 Where possible, DFU staff should gain access to the computer system BIOS (Basic Input Output System) or the UEFI (Unified Extensible Firmware Interface) before transporting it from the search location. This will assist DFU staff with later analysis, as information such as system date and times, installed devices and boot sequences can be retrieved. Where feasible and at the discretion of the DFU staff member, access to the BIOS or UEFI should only be attempted after the hard drives have been disconnected or removed to prevent inadvertently booting up the system and altering the evidence.
- 8.8.12 Where feasible, an anti-static wrist strap should be worn while working within any digital device, media or evidence. Precautions against electro-static discharge should be taken when working in environments that include high-pile carpets, plastic surfaces, metal surfaces, etc. Whenever there is the possibility that static electricity may be within the body, it is necessary to ensure that grounding takes place to release the electro-static discharge.

8.9 Seizing Evidence

- 8.9.1 A determination is required on whether digital devices, media or evidence are to be seized and removed from the search location, or if only the data of the devices will be seized. The decision to seize digital devices must rely on the wording of the 'things to be searched for' and the date ranges allowed for within the search warrant.
- 8.9.2 DFU staff will evaluate and determine the best option for each piece of digital evidence encountered, keeping in mind the degree of intrusion, the size of the digital evidence, logistics and the best evidence rule. In most cases, the original evidence (whether it be a hard drive, media or an image) will be retained by CBSA.
- 8.9.3 Section 31.2(1) of the Canada Evidence Act – Application of Best Evidence Rule and Section 31.3 of the Canada Evidence Act – Presumption of integrity must be applied in respect to electronic documents. (<http://laws-lois.justice.gc.ca/eng/acts/C-5/page-1.html>)
- 8.9.4 DFU staff must be cognizant of the fact that retrieval of historical data, deleted/hidden files and metadata have recently been viewed by the courts as having a higher expectation of privacy and as a result, should be treated as such during the course of drafting the ITO and executing the search warrant. In the event the scope of the search warrant does not include retrieval of this type of data



during the search, but existing indicators supports retrieval of this type of data to be relevant to the offence being investigated, those indicators must be documented and consideration should be given to seeking an additional warrant to search beyond the scope of the original warrant.

- 8.9.5 Once the decision to seize digital evidence has been made, the reason for the seizure must be documented. In addition, once digital evidence is found, DFU staff will analyze how to best process the data contained within that evidence. DFU staff will determine how the data will be recovered, and perform any additional searches to find any hardware or software required in the recovery of the data.
- 8.9.6 Appropriate steps will be taken to ensure that solicitor-client privilege and intellectual property claims are respected.
- 8.9.7 Solicitor - client privilege can be claimed at any time by the subject or a solicitor representing the subject. However, since this privilege belongs to the client and not the lawyer, only the client can waive it, or the lawyer can waive it when instructed to do so by their client. Should a subject make a claim for solicitor-client privilege on a digital device, media or evidence, or where a file, folder or document is marked as being subject to solicitor-client privilege, this will immediately be brought to the attention of the IIC.
- 8.9.8 Under the common law, and following section 488.1 of the *Criminal Code*, the item to which privilege was claimed will be sealed and be placed in the custody of the sheriff of the district or county in which the seizure was made. Other alternatives may be pursued under the direction of the PPSC.
- 8.9.9 Handling procedures unique to digital devices must be utilized in order to protect data. As a result, those assigned to take custody of digital devices as a result of a solicitor-client privilege claim should be advised of the volatile nature of these devices and their contents by way of a letter. For a sample of the letter that should be used when a claim to solicitor-client privilege is made, refer to [Appendix E](#).

8.10 Evidence Transportation

- 8.10.1 When preparing seized digital evidence for transport, items will be labelled according to established regional seizure procedures, identifying the name of the E&I staff member (or person seizing the digital evidence), the location the evidence was found, the time and date and a brief description of what was seized.
- 8.10.2 It is important to protect digital devices and media from all potential adverse effects of transportation such as: moisture, static electricity, extreme temperatures and vibration. Properly insulated and protected storage and transport containers are to be utilized or procured as required for each scenario, and the quantity and types of devices and media requiring transport.



8.10.3 All seized items will be packaged and transported as fragile cargo. Anti-static bags or containers should be used if available. All seized items that are digital in nature shall be kept away from magnets, radio transmitters, car stereo speakers and anything else that may generate an electrical field. Where ever possible, faraday bags or radio frequency shielding cloth should be utilized to enclose mobile digital devices. This is especially true if the state of a device is unknown, such as sleeping or hibernating. If transporting a desktop computer, the power cord should be detached from the back of the computer, and for a laptop computer, the battery should be removed (if possible). Evidence tape may be placed over the power plug connector so that DFU staff can be sure that the computer is not booted after seizure, except under their supervision.

8.11 Intake

8.11.1 A Post Search Report following a search warrant needs to contain an itemized, detailed list of all electronic items seized during the course of the search warrant. The DFU staff should make it clear whether the items are:

1. seized and being retained by the Criminal Investigations Section,
2. seized and imaged, with the original being returned to the person from whom it was seized and the image being retained as evidence.
3. seized and imaged, with the original being retained as well as a working copy. (It should be noted whether the person from whom the item was seized is receiving an image of the seized device or files extracted from the seized device) or
4. seized during execution of the search warrant but being returned with no copies being retained by CBSA.

8.11.2 The date that this report is provided to the investigator should be captured in CIIMS as it forms part of the performance measurement for the DFU program. A copy of the report and all associated items should be included within CIIMS.

8.11.3 DFU staff must prepare a report of what occurred during the execution of the search warrant. Information such as which computer systems were reviewed, which were seized, which were searched on site, last known state (on/off/locked, etc.) and the results of the search should be included in the report. This report should enable the IIC of the file to create a picture of what happened during the search. This report should be written as soon as possible after a search.

8.11.4 The DFU staff must also include a copy of their handwritten notes and a copy of any photos taken during the search warrant execution as well as the index explaining what each photo represents.



- 8.11.5 Upon intake in the digital forensic lab, each evidence item will be photographed. Images are to be taken of the evidence bags prior to opening as well as detailed photographs of each evidence item to show condition upon receipt as well as any identifying markings.
- 8.11.6 All new digital forensic examination requests are to be presented with a completed and authorized Request for Examination form ([See Appendix C](#))
- 8.11.7 Evidence must be stored and secured in accordance with this policy and adhering to CBSA security standards, and guidelines as outlined in “Criminal Investigations Bulletin 09-2009: Control and Safeguarding of Evidence” and “Criminal Investigations Bulletin 01-2014: Evidence Rooms – The Control & Safeguarding of Evidence
- 8.11.8 DFU staff must ensure that all incoming and outgoing signals from devices are blocked by disabling connections to Wi-Fi, Bluetooth and mobile data networks. This can be accomplished in a number of ways, including: faraday bags, boxes or cages; device airplane mode or similar settings.

Part 9: Examination of Digital Devices

9.0 Research

- 9.0.1 Prior to the start of a digital forensic exam, DFU staff must have knowledge of the forensic process that will return the requested results.
- 9.0.2 Research into new techniques shall not be completed on live evidence items. All research is to be conducted on test devices of the same model and version of the evidence item. Test devices can be purchased upon approval by the DFU National Coordinator, or borrowed from an office that already has the required device.

9.1 Data Acquisition

- 9.1.1 Digital evidence, by its very nature, is fragile and can be altered, damaged, or destroyed by improper handling or examination. Examination is best conducted on a copy of the original evidence. The original evidence shall be acquired in a manner that protects and preserves the integrity of the evidence.
- 9.1.2 Prior to any examinations, discussions with the IIC must occur to determine the details of the case and of the potential evidence to be collected.
- 9.1.3 Legal authority to collect the evidence must be reviewed; must be clear; and any restrictions must be noted. If additional evidence regarding another potential criminal or regulatory infraction is discovered during the examination process, additional judicial authority should be obtained before



the examination continues. This will depend on the specifics of the investigation and the type of evidence and allegations involved.

- 9.1.4 Whenever possible, a bit by bit copy of the original evidence shall be made and the original stored unaltered.
- 9.1.5 Pre and post-acquisition hash values must be calculated and recorded where applicable. A SHA - 256 (Secure Hash Algorithm – 256 bytes) algorithm is to be used.
- 9.1.6 If a procedure or tool used to extract or copy evidence is known or expected to in any way alter the original evidence, a detailed report of the circumstances or reasons for the alteration must be completed. Such a digital footprint is common for many forensic processes and tools, but must be clearly articulated for the courts.
- 9.1.7 **Physical Acquisition**
 - a. Physical acquisition consists of a bit by bit copy of the entirety of the original media.
 - b. Hardware or software write blockers must be used when possible to prevent writing to the original evidence.
 - c. Forensic image(s) should be acquired using hardware or software that is capable of capturing a bit stream image of the original media.
- 9.1.8 **Logical Acquisition**
 - a. Logical acquisition is a copy of the requested file as allowed by the operating system's file system.
 - b. Hardware or software write blockers must be used when possible to prevent writing to the original evidence.
 - c. Forensic image(s) should be acquired using hardware or software that is capable of capturing a logical image of the original media.
- 9.1.9 **Live Acquisitions**
 - a. Live acquisition is the data that is acquired while the system is on.
 - b. Live data should be acquired using hardware or software that is capable of capturing a logical image of the original media.
 - c. Live acquisition software should be run from trusted media to prevent unnecessary changes to the live system.
 - d. Live acquisition software should be run at the highest level of privilege (root/administrator rights) available to ensure all possible data is available for acquisition.



9.1.10 Individual or Targeted File(s) Acquisitions

- a. Targeted file(s) should be acquired using hardware or software that is capable of capturing a logical image of the original media.

9.1.11 File System Acquisitions

- a. File system acquisitions may be obtained from mobile devices.

9.1.12 Items received for forensic examination should be inspected for inclusion of removable storage media (Disks, USBs SIM cards, Memory cards, etc.).

9.1.13 The method used to acquire the evidence should be forensically sound where possible.

9.1.14 All items submitted for examination must be stored in a manner that will preserve the integrity of the media and data contained within.

9.1.15 All forensic images should be archived. Analysis should only be conducted on a copy of the forensic image, if possible.

9.1.16 Errors that occur during the acquisition process must be documented.

9.1.17 The integrity of the data acquired must be verified by the use of hash values (MD5, SHA-1 and SHA-256) when applicable.

9.1.18 The data obtained within the scope of the warrant must be presented and reviewed with the IIC to determine analysis progression.

9.1.19 A report of the initial dump of files as per the search warrant under which the device was seized (or other authority, as applicable) must also be prepared for review by the IIC. This would contain files that would be searched for and examined on the basis of review, keywords, parsing file systems, particularly user areas, and any other methods that the examiner finds useful.

9.1.20 DFU staff shall record the software versions and application used to conduct data analysis.

9.1.21 Detailed notes must be maintained throughout the process and software logging should be enabled where applicable.

9.1.22 Evidence obtained must be validated using a second forensic process where applicable.

9.1.23 Created scripts or programming methods must be documented and maintained.

9.2 Data Review

- 9.2.1 All information discovered within the parameters of the search warrant or judicial authority must be presented to the IIC for review and or refinement of the keyword search terms.



- 9.2.2 Additional analysis requests received that relate to the original request will be processed in the order they were received. Consideration must be given to any relevant factors such as individuals in custody or mandated court deadlines.
- 9.2.3 Hash sets shall be used whenever possible to filter and reduce the amount of information that requires review, as well as to reduce unnecessary exposure to offensive materials. The use of hash sets allows for identification of previously discovered child pornography images and videos. All hash set hits will still need to be verified that they fall within the definition of child pornography as per section 163(1) of the *Criminal Code*. This is to be performed by the IIC.
- 9.2.4 Categorization of child pornography images, videos and stories that meet the *Criminal Code* section 163.1 (1) definition of child pornography shall be completed by the IIC with technical assistance from DFU staff as required.

9.3 Reports

- 9.3.1 The report for court purposes should include the following aspects:
1. How the evidence was acquired.
 2. How the evidence was imaged and authenticated.
 3. How one of the copies of the images was retained as the 'original' and how a working copy was made.
 4. What processing occurred when the image file was loaded into a forensic suite and what other software was used for processing the image files. This should be detailed and include a description of all the processes that occurred.
 5. Any conclusions reached as a result of reviewing the files.
 6. How disclosure will occur, preferably with links to files copied and on the same drive as the report.
- 9.3.2 Forensic examination reports issued by the examiner must address the requester's needs and contain the following items:
1. Identity of the reporting organization
 2. Case identifier or submission number
 3. Identity and contact information of the requester
 4. Date of receipt of items for examination
 5. Date of report



6. Descriptive list of items submitted for examination
 7. Identity and contact information of the examiner
 8. Description of examination
 9. Results/conclusions/derived items
 10. Details of any purposeful or inadvertent altering of the original evidence during processing
 11. An outline of the process that was followed from search warrant execution to analysis
 12. The DFU staff member's CV
 13. A report of the DFU staff member's findings
 14. A copy of the DFU staff member's notes and the evidence that was extracted
- 9.3.3 The copy of the extracted evidence should be provided to the IIC under separate cover. When preparing the report, DFU staff must ensure that it is written in layman's terms so that the report can be understood without the reader having any technical background.
- 9.3.4 Once the report is prepared by DFU staff, it will be provided to the IIC of the case, who will then provide it to the Public Prosecution Service of Canada (PPSC), or one of its Crown agents. Subject to PPSC approval, the subject and their defence counsel may be informed that they may request a review of the entire DFL file (including digital evidence) at any point in time.
- 9.3.5 If the defense or the subject requests a copy of the forensic images for review, PPSC should be consulted and if approved, it will be the responsibility of the defense and the subject to arrange for the technical expertise to translate and view the images. This can be arranged with DFU staff at the CBSA office or with a third party digital forensic expert. The cost for media required to transfer digital evidence to all parties must be recorded and provided to the DFU manager. It is up to the DFU manager to determine whether cost recovery efforts will be pursued for this media.
- 9.3.6 CBSA must fully disclose all seized digital evidence, notes, analyses, findings and reports to the prosecution, just as there is an obligation to fully disclose the presence of seized physical goods or documents.

Part 10: Backups and Data Retention

- 10.0.1 All copies of data, notes and reports shall be provided to the IIC for disclosure as required.
- 10.0.2 Data must be retained as mandated by the CBSA policy on data retention for Criminal Investigations.



10.0.3 All stored data shall be part of an active backup routine that includes off-site storage of all evidence backed up.

Part 11: Health and Safety

11.0 Repetitive Strain Injury

11.0.1 Repetitive Strain Injury (RSI) is one of the main hazards associated with the long-term use of computers and other digital devices. Because the examination of devices requires hundreds of repetitive arm, hand, finger and thumb movements, the risk of RSI is high. It is critical to the health and well-being of DFU staff to be provided with proper laboratory workspace size and workstation configuration.

11.0.2 Laboratories and workspaces shall be properly evaluated and subsequent recommendations followed in accordance with the CBSA Hazard Prevention Program. This will include proper vertical and horizontal placement of chairs, monitors, keyboards and pointing devices to achieve proper ergonomics. Each laboratory shall be properly outfitted with adjustable devices for monitors and input devices that can be customized for the ergonomic requirements of all DFU staff. Where determined as necessary or deemed required as a result of the Hazard Identification process, specialized ergonomic devices will be provided for DFU staff on a case by case basis.

11.0.3 Even with the best ergonomic configuration, it is still recommended for computer users to take a minimum 5 minute stretch break out of every 30 minutes of computer work. Each break should include stretches or exercises that help improve circulation and relieve stress on the body.

11.0.4 More information on RSI and how to prevent its occurrence can be found at your local medical provider or online at:

1. www.ergoweb.com
2. www.ccohs.ca

11.1 Potential Acute Stress Reactions (ASR) (including Vicarious Trauma/Secondary Trauma, and Post-traumatic Stress Injuries due to Exposure to Offensive Materials)

11.1.1 The CBSA Intervention Protocol for CBSA Employees Who Are Exposed to Offensive Material DFU staff are encouraged to visit this site and read the information relevant to their personal experience and exposure to obscenity.

11.1.2 While Acute Stress Reactions (ASR) are difficult to prevent completely, negative reactions can be minimized by: promoting self-awareness; knowing one's exposure limitations; using valid



mitigation strategies debriefing one-on-one or as a group soon after an event; and following up on lingering symptoms.

11.1.3 Within the CBSA, there is a large network of resources and counselling available through the Employee Assistance Program (EAP). The EAP coordinator-counsellors are registered mental health professionals who are trained in therapeutic interventions for acute stress reactions, including Post Traumatic Stress Injuries (PTSI). On-site EAP Referral Agents have specialized training, including making referrals to the appropriate resources, including a roster of contracted service providers (also trained mental health professionals. This service is free and confidential, and can be accessed directly by calling [REDACTED]. When a DFU staff member is exposed to material that they find disturbing, it is very important that they confide in a local EAP referral agent, a coordinator-co co-worker, friend or supervisor to 'vent' or discuss the emotions that are being experienced during and after the event.

11.1.4 The keys to recovering from ASR and PTSI include self-awareness, regular support, acceptance of one's personal limits to exposure, and the use of effective strategies.

11.2 Manager Responsibilities - Managers of DFU Staff shall:

- 11.2.1 Conduct an orientation discussion (materials in appendix) with each DFU staff member prior to allowing them to view digital devices and media in the course of their duties. Such discussions are to gauge the awareness and readiness of the employee to potentially encounter disturbing and/or large volumes of offensive material and to ensure that they are aware of any potential impacts, mitigation techniques and resources available.
- 11.2.2 Review the CBSA Intervention Protocol for CBSA Employees Who Are Exposed to Offensive Material and the related Manager's Guide and Checklist.
- 11.2.3 Follow the CBSA's Policy on Duty to Accommodation for employees that may be temporarily or in the longer term, unable to view such materials due to the potential impacts it may have on their overall well-being, or given current circumstances in their lives. While avoidance of these types of materials may be required for a period of time, a follow-up assessment (particularly at the officer's request) may be conducted at a later time to determine if a return to duties is possible without negative impact to overall wellness.
- 11.2.4 Participate in the half-day CBSA training session: Mitigating the Impacts of Exposure to Offensive Materials.
- 11.2.5 Schedule semi-annual meetings (NOT aligned with the performance management cycle) with DFU staff who are exposed to offensive materials, and offering EAP assistance or other support as required.



11.3 Employee Responsibilities – E&I staff shall:

- 11.3.1 Prior to commencement of work within the Digital Forensic Unit, a “pre-assessment” of suitability and an orientation-type discussion with their manager is required. The discussion will include: the risk of being exposed to offensive materials while working within the Digital forensic Unit and the resources available to mitigate the effects of such exposure.
- 11.3.2 Around the period of time of the employee’s anniversary date within the unit, engage in a discussion with their manager on the volume and type of offensive material that they have been exposed to, and how they have coped or been affected by the exposure. This conversation should NOT be aligned with the Performance Management Review and the outcomes NOT indicated in the performance assessment.
- 11.3.3 Review the protocols, responsibilities and reference materials within the CBSA Intervention Protocol for CBSA Employees Who Are Exposed to Offensive Material.
- 11.3.4 Prior to accepting work within the DFU, participate in the half-day CBSA training session: Mitigating the Impacts of Exposure to Offensive Materials.
- 11.3.5 Participate in annual checkups and refresher presentations, as such training is developed and made available.
- 11.3.6 Be aware of resources and materials that are immediately available prior to, or in the event of exposure to offensive materials. Such resources include: pre-checklist, eye patch, reframing narrative, Tetris game and the Where’s Waldo books, as well as known “mitigation and recovery techniques”.

Part 12: Court Proceedings

- 12.0.1 The policy on court attendance can be reviewed [Customs Enforcement Manual Part 9, Chapter 4, Court Policy and Procedures](#)
- 12.0.2 Prior to attending court, it is recommended that E&I staff and the prosecutor meet to review the digital evidence that was discovered. This is also a good opportunity for DFU staff to provide additional explanation and clarification to the prosecutor regarding any digital forensic related processes.
- 12.0.3 Prior to testifying, DFU staff must understand and validate their evidence. DFU staff should rely on their training, skills, knowledge and experience in their testimony rather than on the forensic software that was used to extract the evidence from the digital devices or media. Software referred to as “push-button” software, is particularly of concern, as the DFU staff member must understand and be able to clearly articulate the processes occurring behind the software functions.



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12.0.4 During the course of testifying, DFU staff may need to be qualified as an expert in court. If determined to be an expert, DFU staff will be able to give opinion evidence. Being qualified as an expert in court is normally only applicable to the immediate court proceedings and not transferable to future legal proceedings.

Opinion evidence, according to Black's Law Dictionary, is: *"evidence of what the witness thinks, believes, or infers in regard to facts in dispute, as distinguished from his personal knowledge of the facts themselves. The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to 'expert witnesses'. Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state their opinions as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion."*



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Appendix A – Training Report template

[Event Title]

Post-Trip Report

Event attendee: [name]

[date of event]

[location of event]



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Presented by [Name]

Training Date: [Date]

[Brief outline of event – executive summary]

Use this section to provide a non-technical executive summary of the training event.

[Summary of learning]

Use this section to describe the learning achieved or talks and presentations attended.

[Relevance to your position]

Discuss how this event was relevant to your current duties or how this has helped in scope of your duties.

[Course Recommendation]

Provide feedback on the overall aspect of the course and if you would recommend the course. Please include the reasons for your recommendation.

Submitted by: [Name]

[Unit]

[Date]



Appendix B – Forensic Lab Equipment

- Adjustable ergonomic workstations and chairs are required for the varied types of digital forensic work.
- Sufficient power requirements and power outlets that include at least one 30 amp outlet.
- Proper ventilation to accommodate the number of computers and devices anticipated to be installed (typically three to four computers per DFU staff member);
- Primary high powered desktop computer capable of running Apple Macintosh OS, Windows and Linux/Unix operating systems; having a minimum of four high capacity hard drives and two DVD read/write drives; and a minimum of two large screen (26" or larger) video display monitors.
- Secondary desktop computer capable of running Windows and Linux/Unix operating systems, with a minimum of two high capacity hard drives, one DVD read/write drive; one large screen (24" or larger)
- Laptop computer capable of running Windows or Macintosh operating system, with a minimum of two high capacity hard drives, one DVD read/write drive and sufficient modern output connections for high speed data transfer and digital device connection.
- Uninterruptable power supply unit capable of powering a minimum of 3000VA for 10-15 minutes.
- Large capacity external disk drive array of sufficient size to provide data backup for 10 years of seized evidence, working files, archived files. This will vary by region and office, but, an estimated 40TB of storage is recommended per DFU laboratory.



Appendix C – Request for Examination Form

Today's Date	Request for Laboratory Examination			Date Received in Lab (Initials)	Date Returned / Tracking # (Initials)
Agency Case / Reference #			Agency Case / Project Name		
Examination Requested by Agency		Port /Det/ Pct	Badge #	Contact / Phone #'s	
Name - PLEASE PRINT:					
Suspect(s) – Last, First, MI		DOB		Suspect(s) Address	
Authority to Examine Goods / Reason for Search				Authorizing CBSA Manager/Chief/Director Name / Title / Signature	
Please identify the types of evidence / information to be searched/ recovered:					
Financial Records	<input type="checkbox"/>	Word Processing/Text Documents	<input type="checkbox"/>	[Other – Please be specific]	
Internet History & Chat Files	<input type="checkbox"/>	Child Porn	<input type="checkbox"/>		
Email Files	<input type="checkbox"/>	Check-writing programs, credit card info	<input type="checkbox"/>		
Item #	Evidence ID	Item Description (Include model and serial numbers)		Special Instructions	



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Upon completion of forensic examination, evidence items will be secured in the Forensic Lab Evidence Lock-up, pending disposition of the matter as applicable. A detailed report of findings will be returned to submitting officer/investigator. Evidence from outside agencies will be returned directly to submitting officer with detailed report of findings.

Notes:

General Instructions – Completion of Request for Laboratory Examination Form

- Please do **NOT** place evidence tape directly on CPUs or any other seized media such as floppy disks, backup tapes, CD's, etc. These items should be bagged and labeled in accordance with evidence handling guidelines.
- It is important to identify what you expect/hope to find as evidence on the computer or electronic media; please be as detailed as possible when completing this form. Please attach additional sheets if necessary.
- **Please attach a copy of the Port Seizure, CIIMS printout, and / or search warrant, and in addition, a copy of your case report / statement of facts.**



Appendix D – Search Kit List of Items

- Laptop or forensic processing computer
- forensic software
- hard disk drives, sanitized and formatted
- external dock for disk drives
- write-blockers – hardware and software
- cables (for use with write-blockers)
- mobile device data extraction unit
- digital camera with media card and spare batteries or charger
- media card reader
- extension cords
- portable table/work space
- anti-static mats and wrist straps
- power bar
- tool kit (screw drivers, pliers, jumpers, screws, etc.)
- external CD/DVD and floppy drive
- blank CDs and DVDs
- sterilized removable media (SIM cards, USB drives, etc.)
- faraday bags or faraday box
- forensically sound boot disks
- back-up program software
- forms
- office supplies – tape, stapler and staples, note pads, sticky notes, paper clips, fasteners, pens, permanent markers, scissors, envelopes (large and small), labels
- evidence bags/boxes
- evidence packaging materials (anti-static)
- latex gloves

* Please note that this list is not all inclusive



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Appendix E – Claim to Solicitor-Client Privilege

Letter to Sheriff

Date

Office of the Sheriff (agreed upon with the lawyer)

Address

City, Province

Postal Code

Re: Computer Seized Pursuant to *Customs Act* Section 111 Search Warrant (or Section 487, as applicable)

Dear *[insert name of Sheriff here]*:

On *[insert search date]*, digital devices or media and digital contents were seized by an officer of the Canada Border Services Agency from *[insert the CBSA Investigations office doing the search]* pursuant to a search warrant issued by *[insert name of justice]*.

Contents of the above-mentioned digital devices or media were the subject of a solicitor-client privilege claim pursuant to section 488.1 of the Criminal Code and the digital devices or media and their contents were placed into the custody of your office on *[insert the date that the evidence was put in the Sheriff's trust]*.

Due to the fragile nature of digital media, safeguards, which exceed the needs of other physical forms of evidence, should be adhered to. These special precautions will need to be taken to ensure that the original media is preserved and protected from both physical and electronic hazards.

The Canada Border Services Agency's Criminal Investigations Division has on staff, Digital Forensic Unit (DFU) staff that are trained in digital forensic examination and investigation. These DFU employees have the knowledge, expertise, computer hardware, and software necessary to ensure that seized digital evidence is preserved in its original state. These DFU employees are available to advise you on special storage precautions, which should be taken, with respect to the seized digital devices or media referred to above.

It is the policy of the Canada Border Services Agency to have DFU staff make a copy or backup of a digital device or media, as soon as practically possible, following a seizure action. The copy or backup is then used:

- to provide a copy to the person from whom it was seized should they request a copy;
- for analysis/processing by the Canada Border Services Agency

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When a backup or copy of a digital device or media is made, special techniques (“safety nets”) are employed to ensure that the integrity of the original evidence is maintained and that the digital evidence is not altered or destroyed. (only an employee trained in digital forensic examination or investigation should access seized digital devices or media). In the foregoing instance, a copy of the seized digital device or media has **not** been created, because of the solicitor-client privilege claim.

Given that digital data may be easily altered or damaged, the Canada Border Services Agency requests the following - with respect to any initialization (turning a digital device on), examination or copying of data or information stored on the seized digital device or media, while it is under your custody:

Should the person from whom the digital device or media was seized apply under Section 488.1(9) of the Criminal Code to examine documents or files on the seized devices or media, that a Canada Border Services Agency DFU staff member be requested to assist to ensure that the necessary safeguards are in place so that the documents or files can be examined without alteration or damage.

Should the person from whom the digital device or media was seized apply under section 488.1(9) of the Criminal Code to make a copy of the seized device or media, that a DFU staff member of the Canada Border Services Agency be requested to carry out the duplication process under your control.

Note: It is possible for Canada Border Services Agency DFU employees to carry out the above processes without personally viewing the file or document contents of the seized computer.

The assistance offered and the requests made above are done with an aim to ensuring the integrity of the original seized digital evidence for the mutual benefit of all parties.

Should you require the assistance of a Canada Border Services Agency DFU staff member, please contact *[insert the name of the Investigator]* at *[insert the telephone number of the Investigator]*.

Sincerely,



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Appendix F – Attachment A – Things to be searched for

Attachment A - Things to be searched for

- a) [insert paragraph for documents]
- b) [insert paragraph for goods, if applicable]
- c) items described in paragraph (a) in digital or electronic format, as well as documents/records that may be uniquely digital or electronic including but not limited to: e-mail (received or sent or in draft form); and records (including deleted/hidden records, and metadata) and content of past instant messaging or online chat conversations or other electronic communication, that are stored on or available to a computer system or other digital device or media storage device;
- d) any other device or software or manuals or data security key used or capable of being used to create, store, manipulate or reproduce the items in paragraph (c).
- e) power cords, connecting cables and adaptors or cradles and the like as necessary to find and seize....
- f) passwords.....

[Include limiting parameters such as persons, dates, products, vendors and/or countries involved]



Appendix G – Attachment C - Grounds for Belief - Computer Search

Attachment C - Grounds for Belief - Computer Search

[Insert these paragraphs at the end of the Information to Obtain...]

1. On {date}, I spoke with {DFU member}, who is a member of the Digital Forensic Unit (DFU) in the Criminal Investigations Section within the Canada Border Services Agency (CBSA). {DFU member} is trained in the forensic search, analysis, extraction and preservation of digital data from digital devices and media and as such is aware of the following:
 - i) Members of the DFU can forensically examine digital devices and media to retrieve information from them. Data is typically stored on memory chips or traditional hard drive(s) contained within a digital device, although manufacturers may also utilize other types of storage. To conduct a comprehensive search, the forensic examination will include searching all data storage areas within a device for the “Things to be searched for” in Attachment A.
 - ii) The data searched for typically includes, but is not limited to, the following:
 - i. Documents and spreadsheets, such as business records;
 - ii. Email messages, instant messages, and other stored communications;
 - iii. Web pages, either created on the media or downloaded from the world wide web;
 - iv. Database files and other specialized files such as those used by accounting software.
 - iii) Digital data deleted by a user is not immediately erased. Rather, that space is marked by the device as available for reuse. If this area is not reused prior to seizure, digital forensic tools may be able to retrieve the deleted information.
 - iv) Metadata is data about data. Metadata can be created by a user or may be automatically generated without any involvement or initiation by the user. Examples of metadata include, but are not limited to the following:
 - i. times and dates relating to the creation, deletion or modification of data;
 - ii. mapping coordinates of a photograph;
 - iii. user identification relating to the creation of data or device settings;
 - iv. connectivity information related to the insertion, attachment or connection of the device to other devices and networks;
 - v. times and dates related to device start-up, shut-down, and user log-in and log-



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- out;
- vi. on-line history and software program usage.
- v) Data saved on a digital device can be hidden from casual examination by means of a variety of techniques. Even novice users may make use of these techniques. Password protection, encryption or security may make cursory on-site searching impractical or impossible.
- vi) Where possible and practical the DFU member will conduct cursory searches before seizing any digital device, media or data. This is done in order to determine their relevance to the "Things to be searched for" in Attachment A, as well as the use, ownership, possession and maintenance of these digital devices and media.
- vii) In order to retrieve all available data, the DFU member will, where possible, create a bit-image copy, which is an exact duplicate of every bit of data available to the imaging software. The imaging of digital devices and media may be completed at the place to be searched. However, where this is not possible or practical, the original digital devices and media will be seized and be imaged off-site. To access such data or render it intelligible, the DFU member may need to work in a specialized environment using specialized techniques and computers, components or software programs. The DFU member will, where possible, ensure that the original data remains unmodified during the imaging process.
- viii) Based on the above processes, the DFU member will determine the reasonableness and necessity of asking anyone on the premises with knowledge of passwords or encryption keys required for accessing any digital device or media, to divulge that information to them. The DFU member will also determine whether it is reasonable and necessary to seize additional device peripherals or software required for accessing or controlling data within any seized digital devices and media.
- ix) The preceding discussion has focussed on computer hard drives; however, the principles discussed apply equally to all digital devices and media, including but not limited to cell phones. All digital devices and media will be searched for the "Things to be searched for" in Attachment A as described in the judicially authorized Warrant to Search.

The following 2 paragraphs may be used with Criminal Code warrants only. Consider adding these paragraphs if you intend to use onsite computer system to generate data to be seized, or if applying for an Assistance Order. Please discuss with your DFI and Manager.



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1. Pursuant to *Subsection 487(2.1) of the Criminal Code*, any person authorized by this section to search a computer system or other electronic device or media in a building or place for data may:
 - a. use or cause to be used any computer system at the building or place to search any data contained in or available to the computer system;
 - b. reproduce or cause to be reproduced any data in the form of a print-out or other intelligible output;
 - c. seize the print-out or other output for examination or copying; and
 - d. use or cause to be used any copying equipment at the place to make copies of the data.
2. Pursuant to *Subsection 487(2.2) of the Criminal Code*, and with authorization to search a computer system for data, every person who is in possession or control of any building or place in respect of which a search is carried out under this section shall, on presentation of the warrant, permit the person carrying out the search:
 - a. to use or cause to be used any computer system at the building or place in order to search any data contained in or available to the computer system for data that the person is authorized by this section to search for;
 - b. to obtain a hard copy of the data and seize it; and
 - c. to use or cause to be used any copying equipment at the place to make copies of the data.

(Use paragraphs 1 and 2 with *Criminal Code Warrants* only)



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Criminal Investigations Program

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Digital Forensic Unit

Digital Forensic Investigations Policy

June 2016

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Effective Date

1. This policy takes effect on April 1, 2016.

Policy Statement

2. It is the policy of the CBSA to provide court-recognized experts to identify, extract, document, analyze and preserve digital evidence in support of the CBSA's enforcement continuum and its criminal enforcement mandate.

Policy Objective

3. The objective of this policy is to provide direction to Enforcement and Intelligence (E&I) staff and management responsible for digital forensic examinations to ensure consistency, accountability and that activities are lawfully conducted.

Application

4. This policy applies to E&I staff involved in any degree with handling or conducting digital forensic examinations of digital devices and media during the course of conducting a criminal investigation, and the managers and directors of those staff.
5. E&I staff conducting digital forensic examinations of digital devices and media will do so in accordance with this *Digital Forensic Investigations Policy* and corresponding *Standard Operating Procedures*.
6. This policy does not apply to Border Services Officers, staff within CBSA Science and Engineering, or other CBSA staff who may conduct examinations of digital devices and media for their own program purposes.

Definitions

7. **E&I Staff** - For the purpose of this policy refers to E&I staff who conduct digital forensic examinations of digital devices and media in the context of digital forensic investigations.
8. **Digital Forensic Investigations** - The identification, extraction, analysis and preservation of material found in digital devices for evidentiary purposes.
9. **Digital Devices** - An electronic device that is capable of receiving, storing, processing or sending digital information.
10. **Media** - Data storage material divided into four broad categories according to the recording method: (1) Magnetic, such as diskettes, disks, tapes, (2) Optical, such as microfiche, (3) Magneto-Optical, such as CDs and DVDs, and (4) peripheral storage such as hard disks and USB keys.
11. **Metadata** – Underlying information, definition or description of one or more aspects of the data; or data about the data. (ie GPS coordinates of a photograph)



12. **Goods** – “goods”, for greater certainty, includes conveyances, animals and any document in any form (*Customs Act* S.2(1))
13. **Documents** – means any medium on which is recorded or marked anything that is capable of being read or understood by a person or a computer system or other device. (*Criminal Code* S. 487.011)

Authorities

General

14. Authority for the CBSA to examine digital devices and media stems from various lawful authorities that permit the use of digital forensic investigation as an investigative technique to enable enforcement of CBSA program legislation.

Customs Act

15. **Section 111 (1) Information for search warrant** - A justice of the peace who is satisfied by information on oath in the form set out as Form 1 in Part XXVIII of the *Criminal Code*, varied to suit the case, that there are reasonable grounds to believe that there will be found in a building, receptacle or place
 - (a) any goods or conveyance in respect of which this Act or the regulations have been contravened or are suspected of having been contravened,
 - (b) any conveyance that has been made use of in respect of such goods, whether at or after the time of the contravention, or
 - (c) anything that there are reasonable grounds to believe will afford evidence in respect of a contravention of this Act or the regulations,may at any time issue a warrant under his hand authorizing an officer to search the building, receptacle or place for any such thing and to seize it.
16. **Section 111 (3) Seizure of things not specified** - An officer who executes a warrant issued under subsection (1) may seize, in addition to the things mentioned in the warrant,
 - (a) any goods or conveyance in respect of which the officer believes on reasonable grounds that this Act or the regulations have been contravened;
 - (b) any conveyance that the officer believes on reasonable grounds was made use of in respect of such goods, whether at or after the time of the contravention; or
 - (c) anything that the officer believes on reasonable grounds will afford evidence in respect of a contravention of this Act or the regulations.
17. **Section 111 (6) Where warrant not necessary** - An officer may exercise any of the powers referred to in subsection (1) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.



18. **Section 112 Powers of entry** - For the purpose of exercising his authority under section 111, an officer may, with such assistance as he deems necessary, break open any door, window, lock, fastener, floor, wall ceiling, compartment, plumbing fixture, box, container or any other thing.

Criminal Code

19. **Section 487 (1) Information for search warrant** - A justice who is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in a building, receptacle or place
- (a) anything on or in respect of which any offence against this Act or any other Act of Parliament has been or is suspected to have been committed,
 - (b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence, or will reveal the whereabouts of a person who is believed to have committed an offence, against this Act or any other Act of Parliament,
 - (c) anything that there are reasonable grounds to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant, or
- (c.1) any offence-related property,
- may at any time issue a warrant authorizing a peace officer or a public officer who has been appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this Act or any other Act of Parliament and who is named in the warrant
- (d) to search the building, receptacle or place for any such thing and to seize it, and
 - (e) subject to any other Act of Parliament, to, as soon as practicable, bring the thing seized before, or make a report in respect thereof to, the justice or some other justice for the same territorial division in accordance with section 489.1.
20. **Section 487 (2.1) Operation of computer system and copying equipment** - A person authorized under this section to search a computer system in a building or place for data may
- (a) use or cause to be used any computer system at the building or place to search any data contained in or available to the computer system;
 - (b) reproduce or cause to be reproduced any data in the form of a print-out or other intelligible output;
 - (c) seize the print-out or other output for examination or copying; and
 - (d) use or cause to be used any copying equipment at the place to make copies of the data.
21. **Section 487 (2.2) Duty of person in possession or control** - Every person who is in possession or control of any building or place in respect of which a search is carried out under this section shall, on presentation of the warrant, permit the person carrying out the search
- (a) to use or caused to be used any computer system at the building or place in order to search any data contained in or available to the computer system for data that the person is authorized by this section to search for;



- (b) to obtain a hard copy of the data and to seize it; and
- (c) to use or cause to be used any copying equipment at the place to make copies of the data.

Policy Guidelines

General

- 22. E&I staff shall be trained to meet CBSA nationally defined training standards. (see National Training Standards)
- 23. Prioritization of digital forensic examinations of digital devices and media shall be based on Criminal Investigations', and Enforcement and Intelligence priorities.
- 24. Requests for assistance with conducting examinations of digital devices and media received from, or sent to other CBSA areas, or external law enforcement partners shall only be actioned when legislation or regulatory authorities permit. Prior to initiating an examination when providing assistance to other CBSA areas, or external law enforcement partners, Director/Assistant Director level approval is required to ensure alignment with priorities, legal authorities, and proper resource management.
- 25. E&I staff shall be cognizant of the higher expectations of privacy that apply to the examination and retrieval of information found on these devices. Additional judicial authorization may be required to access, review and/or seize information contained within system generated metadata, and deleted files.
- 26. Laboratories in which digital forensic examinations are conducted, and in which digital evidence is stored must be constructed and secured in accordance with the CBSA Comptrollership Manual, and Criminal Investigations' policy regarding the control and safeguarding of evidence and evidence rooms.
- 27. Access to the laboratory where digital forensic examinations of devices and media are conducted shall be limited to E&I staff who conduct examinations of digital devices and media; regional managers, and Investigators for the purpose of reviewing electronic evidence.

Criminal Investigations and Digital Forensic Examinations

- 28. Digital devices and media, along with digital documents and software, continue to be classified as "goods" in the border context during regulatory processing and assisting other CBSA officers. Prior to discovering any grounds to suspect that a criminal offence may have been committed, careful consideration should be afforded to the breadth and depth of the examination given the high volume of personal data, and higher expectation of privacy associated with these devices.
- 29. E&I staff who discover evidence of a criminal offence during the course of assisting with a regulatory examination of a device, shall seek a search warrant prior to conducting further examination of that device.
- 30. An arrested person has the right to remain silent and therefore is not legally obligated to provide passwords, passphrases or decryption keys that would enable access to a digital device or media.
- 31. Persons are not legally obligated to provide passwords, passphrases or decryption keys for digital devices and media that are seized during execution of a search warrant that would enable access to those devices or media.



Roles and Responsibilities

Operations Branch, Enforcement and Intelligence (Headquarters)

Director General-Headquarters

32. Responsibilities:

- a) Ensuring adherence to this policy and standard operating procedures;
- b) Ensuring performance reporting is conducted in accordance with the performance measurement framework.

Directors - Headquarters

33. Responsibilities:

- a) Ensuring adherence to this policy and standard operating procedures;
- b) Ensuring performance reporting is conducted in accordance with the performance measurement framework.

Managers - Headquarters

34. Responsibilities:

- a) Ensuring adherence to this policy and standard operating procedures;
- b) Directing and monitoring performance reporting in accordance with the performance measurement framework;
- c) Approving and disseminating communications and bulletins associated with digital forensic investigations.

National Digital Forensic Investigations Coordinator - Headquarters

35. Responsibilities:

- a) Developing and maintaining standard operating procedures;
- b) Adhering to this policy and the standard operating procedures;
- c) Communicating expectations and monitoring of performance reporting;
- d) Maintaining, monitoring and auditing national training standards in consultation with Programs Branch and Training and Development Directorate and ensuring a record is kept of E&I staff training;



- e) Consulting and advising E&I managers and staff, and liaising with internal and external stakeholders and law enforcement partners;
- f) Coordinating and monitoring annual operating and maintenance (O&M) forecasts and budgets, including regional disbursements and allocation of regional training budgets for E&I staff;
- g) Defining lab and equipment standards;
- h) Researching and testing equipment, and coordinating its acquisition and distribution nationally, in consultation with Shared Services Canada, CBSA Science and Engineering and CBSA IT as required;
- i) Maintaining and auditing inventory of all equipment and licenses (assets) acquired for the digital forensic program nationally;
- j) Monitoring and maintaining work descriptions and classifications for E&I staff, in consultation with Programs Branch and Human Resources;
- k) Developing and disseminating communications and bulletins associated with digital forensic investigations.

Operations Branch, Enforcement and Intelligence (Regions)

Regional Directors General - Regions

36. Responsibilities:

- a) Ensuring adherence to this policy and standard operating procedures.

Directors - Regions

37. Responsibilities:

- a) Ensuring adherence to this policy and standard operating procedures;

Directors/Assistant Directors – Regions

- a) Ensuring adherence to this policy and standard operating procedures;
- b) Reviewing requests for assistance to examine digital devices and media received from other CBSA areas, and external law enforcement, and approving or refusing such requests based on legislative authorities, Enforcement and Intelligence priorities, resources, and Agency mandate;
- c) Considering all requests for training from E&I staff, in consideration of national training standards;
- d) Ensuring E&I staff have readily available access to properly equipped laboratories and equipment necessary to conduct examinations in safe and secure working environments.



Managers - Regions

38. Responsibilities:

- a) Ensuring adherence to this policy and standard operating procedures;
- b) Ensuring performance reporting is completed;
- c) Ensuring that laboratories and equipment used to conduct digital forensic examination, meet equipment standards as per the standard operating procedures;
- d) Ensuring that only E&I staff who have completed the required training and learning in accordance with national training standards, are permitted to conduct digital forensic examinations of digital devices and media;
- e) Reviewing, making recommendations and referring all requests for assistance to examine digital devices and media received from other CBSA areas and external partners, to the Director;
- f) Ensuring E&I staff are consulted during all stages of search warrants.
- g) Scheduling semi-annual meetings with E&I staff who are exposed to offensive materials, and offering EAP assistance or other support as required.

Enforcement and Intelligence Staff Conducting Digital Forensic Investigations - Regions

39. Responsibilities:

- a) Adhering to this policy and standard operating procedures;
- b) Collecting and recording metrics required for performance reporting;
- c) Maintaining annual training and learning requirements as directed by national training standards;
- d) Maintaining a high level of knowledge and understanding of information technology and the lawful authorities and jurisprudence in relation to the examination and search of digital evidence;
- e) Informing management of any assistance requests received, and seeking management approval prior to providing assistance;
- f) Ensuring laboratories where digital forensic examinations are conducted remain safe and secure working environments, and that evidence, equipment, sensitive material, documents, and manuals are stored in accordance with policy and standard operating procedures.

Programs Branch, Enforcement and Intelligence (Headquarters)

Director General - Headquarters

40. Responsibilities:



- a) Ensuring the development of policy regarding digital forensic examinations of digital devices and media;
- b) Establishing a performance measurement framework to collect statistics and metrics related to conducting examinations of digital devices and media;
- c) Establishing and providing strategic direction, and program priorities in relation to conducting examinations of digital devices and media.

Directors - Headquarters

41. Responsibilities:

- a) Ensuring development of policy regarding digital forensic examinations of digital devices and media;
- b) Establishing a performance measurement framework to collect statistics and metrics related conducting examinations of digital devices and media;
- c) Establishing and providing strategic direction, and program priorities in relation to conducting examinations of digital devices and media.

Managers - Headquarters

42. Responsibilities:

- a) Developing policy regarding examinations of digital devices and media;
- b) Ensuring communication of established strategic direction and program priorities in relation to conducting examinations of digital devices and media;
- c) Establishing a performance measurement framework for examinations of digital devices and media.

Senior Program Advisors - Headquarters

43. Responsibilities:

- a) Developing and managing policies related to digital forensic investigations;
- b) Working with Operations Branch and Training and Development Directorate to recommend, establish, implement and monitor national training standards;
- c) Establishing a performance measurement Framework for examinations of digital devices and media;
- d) Developing work descriptions and classifications in collaboration with Operations Branch and Human Resources.



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Border Services



Services frontaliers

OPERATIONAL BULLETIN:

TITLE: Examination of Digital Devices and Media at the Port of Entry – Interim Guidelines

Date of Issue:
2015-XX-XX

Mode(s):
All

Target Audience:
National

Area of Interest:
Port of Entry

Details:

- The purpose of this operational bulletin is to provide interim guidance on a CBSA officer's authority to examine digital devices or media at ports of entry. Clarification will be provided on when such examinations should and can be performed, and will explain limitations to these authorities.

Authorities:

- Digital devices and media, along with digital documents and software, continue to be classified as 'goods' in the context of the border. A CBSA officer's authority to examine goods is specified under the *Customs Act* and the *Immigration and Refugee Protection Act* (IRPA).
- Paragraph 99(1)(a) of the *Customs Act* provides CBSA officers with the legislative authority to examine goods, including digital devices and media, for customs purposes only. Although there is no defined threshold for grounds to examine such devices, CBSA's current policy is that such examinations should not be conducted as a matter of routine; they may only be conducted if there is a multiplicity of indicators that evidence of contraventions may be found on the digital device or media.
- Subsection 139(1) of the IRPA allows for the search of digital devices and media at the ports of entry where there are reasonable grounds to believe that the person has not revealed their identity or has hidden, on or about their person, documents that are relevant to their admissibility; or has committed, or possesses documents that may be used in the commission of people smuggling, human trafficking, or document fraud. The purpose of this search must be confined to identifying the person, finding documents relevant to admissibility or that may be used in the specified offences, or finding evidence of the specified offences.
- Examination of digital devices and media must **always** be performed with a clear nexus to administering or enforcing CBSA-mandated program legislation

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that governs the cross-border movement of people and goods, plants and animals. CBSA officers shall not examine digital devices and media with the sole or primary purpose of looking for evidence of a criminal offence under any Act of Parliament. Officers must be able to explain their reasoning for examining the device, and how each type of information, computer/device program and/or application they examine may reasonably be expected to confirm or refute those concerns. The officer's notes shall clearly articulate the types of data they examined, and their reason for doing so.

Actions required by CBSA officers:

- Where there is a multiplicity of indicators, or further to the discovery of undeclared, prohibited, or falsely reported goods, officers are authorized to conduct progressive examinations of digital devices and media for evidence of contraventions or to support allegations.
- Evidence may include, for example, electronic receipts for goods; information that refers to the acquisition or origin of the goods; or information that may afford evidence of a contravention to CBSA-mandated legislation that governs the admissibility of people and goods, plants and animals into and out of Canada. Such evidence may, for example, uncover the following: a confirmation of identity; receipts and invoices for imported goods; contraband smuggling; or, the importation of obscenity, hate propaganda or child pornography.
- Where the identity or admissibility of a traveller is in question, officers are justified in performing examinations of digital devices and media to discover the traveller's true identity, evidence of false identities, or other documentary evidence pertaining to admissibility.
- Where evidence of a criminal offence is discovered during the examination process, officers must be cognisant of where the regulatory examination crosses over to the realm of a criminal investigation. Officers must determine on a case-by-case basis, through consultation with their supervisor, whether or not to continue the regulatory examination and identify any possible impacts on potential criminal investigations.
- Officers must follow the CBSA Enforcement Manual Part 9 instructions on securing evidence and on referrals to Criminal Investigations, as well as following regional requirements for referrals to Inland Enforcement or Intelligence.
- CBSA officers shall conduct examinations of digital devices and media with as much respect for the traveller's privacy as possible, considering that these examinations are usually more personal in nature than baggage examinations.



Examination Progression

- Prior to examination of digital devices and media, and where possible, CBSA officers shall disable wireless and Internet connectivity (i.e. set to airplane mode) to limit the ability of the device to connect to remote hosts or services. This will reduce the possibility of triggering remote wiping software; inadvertently accessing the Internet or other data stored externally; or changing version numbers or dates.
- Initial examinations of digital devices and media should be cursory in nature and increase in intensity based on emerging indicators.
- CBSA officers shall only examine what is stored within the device. Officers are not to read emails on digital devices and media unless the information is already downloaded and has been opened (usually marked as read).
- CBSA officers shall notate in their notebooks the indicators that led to the progressive search of the digital device or media; what areas of the device or media were accessed during the search; and why. This is to protect both the integrity of the information within the digital device and the officer.

Passwords and Enforcement

- With the exception of devices that are biometrically (i.e. fingerprint) protected, CBSA officers shall not allow a traveller to input a password into a digital device or media themselves. This practice reduces the risk of any contents being altered and allows for the continuity of evidence.
- In instances where access to digital devices and media are password protected, officers are to request the password to access the device and record it, as well as any alternate passwords provided, in their officer notebook.
- In cases where the device is biometrically protected, CBSA officers may allow the traveller to input the biometric information while the officer monitors and controls the device (for example, the officer may hold the device while the traveller allows the device to read their fingerprint). Should the CBSA officer find information that provides evidence of a contravention, they should then deactivate the password protection on the device or media.
- Passwords are not to be sought to gain access to any type of account (including any social, professional, corporate, or user accounts), files or information that might potentially be stored remotely or on-line. CBSA officers may only request and make note of passwords required to gain access to information or files if the information or file is known or suspected to exist within the digital device or media being examined.
- Conversely, a traveller may voluntarily provide information and passwords to access external data in certain circumstances in order to show compliance;



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CBSA officers should advise travellers that they are not required to access or provide external information, but may voluntarily choose to do so. The login information or password shall not be compelled or recorded in these cases.

- If a traveller refuses to provide a password to allow examination of the digital device, media or the documents contained therein, or if there are technical difficulties that prevent a CBSA officer from examining the digital device or media, the device or media may be detained by the CBSA officer under the authority of Section 101 of the *Customs Act*, on the form K26, *Notice of Detention*, for examination by a CBSA expert trained in digital forensic examinations. For IRPA-related examinations, the device or media may be detained under the authority of subsection 140 (1) of the IRPA on the form IMM5265.
- Until further instructions are issued, CBSA officers shall not arrest a traveller for hindering (Section 153.1 of the *Customs Act*) or for obstruction (paragraph 129(1)(d) of IRPA) solely for refusing to provide a password. Though such actions appear to be legally supported, a restrained approach will be adopted until the matter is settled in ongoing court proceedings.
- At the conclusion of a non-resultant examination, the traveller shall be advised that though their password will be protected in accordance with privacy laws, they may nonetheless change it if they wish to do so.

Contact Information:

Program Compliance and Outreach Division, Traveller Programs Directorate

If you have any further questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Port of Entry Operations' generic inbox: [CBSA-ASFC Ops Travellers-Voyageurs](#).

Approved by: Barry Kong, Director
Programs Compliance and Outreach Division
Traveller Programs Directorate
Programs Branch

Effective Date: 2015-XX-XX

Updated: N/A

Additional bulletins: http://atlas/ob-dgo/bsc-asf/bulletin/index_eng.asp

Canada Border Services Agency

**Policy on the Overt Use of Audio-Video Monitoring
and Recording Technology**

**Programs Branch
November 2013**

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Policy Statement

1. It is the policy of the Canada Border Services Agency (CBSA) to use audio-video monitoring and recording technology in support of its programs, its operations, and for the protection of its employees and assets, while respecting the laws of Canada and the privacy rights of individuals and employees.
2. This policy has been updated to provide guidance on the use of audio-capable equipment and the acceptable locations of such equipment.
3. Future revisions will be made to the policy as the CBSA continues to refine the potential uses of this technology.

Definitions

4. **Administrative Purpose** – as defined in section 3 of the *Privacy Act* - means in respect of personal information about an individual, the use of that information in a decision making process that directly affects that individual.
5. **Audio Capable Cameras** (cameras with microphones) – cameras that can transmit audio without the installation or modification of hardware. This includes cameras that contain a built-in microphone or where there is a connected external microphone.
 - a) **Audio-Activated** (microphone activated) – cameras where an operator can listen to live or recorded audio. (Note: This does not currently exist outside of interview rooms)
 - b) **Audio-Deactivated** (microphone deactivated) – cameras where an operator cannot listen to live or recorded audio. This includes restricting audio capability in camera firmware or restricting audio capability in the video management system.
6. **Audio-Video Monitoring and Recording Technology** – means any device, recording medium and related technology that can be used by itself or as a unit to view and/or record images, and, in some cases, to hear and/or record sound.
7. **Camera** – means any device used to view or record light or thermal images, with or without audio.
8. **Direct or principal control/use** – means, in reference to third party equipment (see paragraph 20), that although the CBSA does not own the equipment, it maintains the control and use of cameras, as well as access to the recording system, whether or not the third party owner also maintains access to the cameras or recording system.
9. **Employees** – means all persons employed by the CBSA, including uniformed and non-uniformed staff.

10. **Event** – means any occurrence that may reasonably be expected to require further action by the CBSA in support to its legislation, mandate and relevant policies associated with programs delivery.
11. **Monitor** – means to watch, and in the context of this policy, is further defined as watching a screen connected to camera or cameras for the purpose of viewing and/or supervising CBSA operations live, in real-time.
12. **Non-Audio Capable Cameras** (Cameras without microphones) – cameras which cannot transmit audio without the installation or modification of hardware.
 - a) **Audio-upgradeable** (microphone-upgradeable) – cameras with audio jack.
 - b) **Non Audio-upgradeable** (non-microphone-upgradeable) – camera without audio jack.
13. **Operational Records** – as defined by Library and Archives Canada; are records created, collected or received by a federal government institution to support and document business functions, programs, processes, transactions, services and all other activities uniquely or specifically assigned to that particular institution by legislation, regulation or policy. (Source: MIDA 3, Common Administrative Records, Appendix I - Terms and Conditions, A. Key Definitions)
14. **Overt Monitoring and recording** – refers to the use of cameras and recording devices which are plainly and clearly announced and/or are visible in their placement or use.
15. **Personal information** – as defined in Section 3 of the *Privacy Act* - means information about an identifiable individual that is recorded in any form.

Note: According to the *Privacy Act*, information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of that individual is not included in this definition.
16. **Port of Entry and CBSA inland service locations** – have the same meanings as in the definition of “customs office” in section 2 of the *Customs Act* and of “port of entry” in section 2 of the *Immigration and Refugee Protection Regulations*.
17. **Public** – means travellers and persons who enter any area used for the purpose of processing persons and/or goods by the CBSA.
18. **Record** – has the same meaning(s) as in section 2 of the *Customs Act* and in section 2 of *National Archives of Canada Act* and, for the purposes of this policy, means any material on which audio-video data is recorded or marked and which is capable of being read or understood by a person, a computer system or other device, regardless of medium or form.

19. **Recording** – means video data, with or without audio, which is being or has been captured in a record and which may be viewed at any time following its creation, until the time of its disposal.
20. **Third party equipment** – means camera and recording equipment that is owned by an entity other than the CBSA.
21. **Transitory Record** – as defined by Library and Archives Canada and for the purposes of this policy are those audio-video records that have no enduring value to the CBSA. They are records that are required only for a limited time to ensure the completion of a routine action or the preparation of a subsequent record but **do not** include records that are required to control, support or document the delivery of programs, to carry out operations, to make decisions, or to account for activities of government. (Source: *MIDA 2.1*, 4. Definition)

Authorities

Canada Border Services Agency Act

22. Paragraph 5(1)(a) – states that the CBSA is responsible for providing integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, that meet all requirements under the program legislation by supporting the administration or enforcement, or both, as the case may be, of the program legislation.

Customs Act

23. Subsection 107(1) – defines “customs information” as information of any kind and in any form that relates to one or more persons obtained by or on behalf of the Minister for the purposes of the *Customs Act* or the *Customs Tariff*, or that is prepared from such information.
24. Subsection 107(2) prohibits the release of, unauthorized access to, or the use of any customs information except as permitted under section 107. Section 107 also specifies terms and conditions under which customs information may be disclosed, accessed or used.

Library and Archives of Canada Act

25. Section 9 – authorizes the Librarian and Archivist to dispose of or destroy any publication or record under his or her control, if he or she considers that it is no longer necessary to retain it.
26. Section 12 – prohibits the disposal or destruction of government or ministerial records without the written consent of the Librarian and Archivist or of a person delegated by the Librarian and Archivist to give such consent.

Privacy Act

- 27. General – the *Privacy Act* requires federal government institutions to respect the privacy rights of individuals by placing limits on the collection, use and disclosure of personal information.
- 28. Section 3 – defines “personal information” as any information about an identifiable individual that is recorded in any form.
- 29. Section 4 – states that personal information may not be collected by a government institution unless it relates directly to an operating program or activity of the institution.
- 30. Sections 7 and 8 – provide that a government institution will not use or disclose personal information without the consent of the individual to whom it relates except under the specific circumstances listed in section 8.

Background

- 31. Over the past several decades, the CBSA has increasingly implemented the use of audio-video technology to carry out its mandate and to ensure the protection of its assets and staff. The use of closed-circuit television cameras to monitor facilities and operations are now an integral part of the CBSA’s security framework and operations management.
- 32. When the CBSA collects personal information, it has certain obligations regarding the protection of such information. While storing it, the CBSA must ensure that personal information is used only for the purposes for which it was collected or purposes that are authorized by law and that the personal information is only accessed by persons with the need to access it as part of their official duties. Finally, when the information is no longer needed or has served its purpose, it needs to be properly disposed of.

Purpose and Scope

- 33. The purpose of this policy is to communicate the CBSA’s position on the use of overt audio-video monitoring and recording technology at ports of entry and inland service locations and the retention requirements for recordings made using such technology.
- 34. This policy also sets out who may access such equipment, make copies of, or disclose recordings.
- 35. This policy applies to all overt audio-video monitoring and recording equipment that is owned or leased by the CBSA, as well as to third party equipment that is directly or principally controlled or used by the CBSA at ports of entry and inland service

locations in support of CBSA's mandate while ensuring compliance with Privacy requirements.

36. This policy applies equally to monitoring and recording equipment that is capable of capturing either audio-video or video-only footage.
37. This policy applies to employees of the CBSA and to any other person who may be authorized to install, operate or maintain equipment, or to view/hear recordings.
38. This policy does not apply to third party audio-video monitoring and recording equipment for which the CBSA does not have direct or principal control or use.
39. This policy does not apply to CBSA employees stationed abroad.
40. This policy does not apply to any circumstance where covert audio-video surveillance may be used and does not supersede any guidelines that have been established by the Courts for the taking of witness or accused statements or interviewing of subjects of a criminal investigation.
41. This policy does not apply to the collection of any non-personal information related solely to the research, design, development or testing of audio or video equipment or technology.

Policy Statements

Permitted Uses

42. The CBSA uses audio-video monitoring and recording technology for the following purposes:
 - (a) To carry out the mandate of the CBSA to ensure the integrity of the border in relation to the national security and/or public safety of Canada and its citizens:

At Ports of Entry

- (i) To detect and identify persons who fail to present themselves and their goods in accordance with sections 11 and/or 12 of the *Customs Act* and/or section 18 of the *Immigration and Refugee Protection Act* ;
- (ii) To detect or deter persons who may pose a risk to the health and safety of CBSA employees and members of the public;
- (iii) To gather information regarding unlawful activity related to any of the legislation enforced by the CBSA (e.g. evidence that goods have been unlawfully removed from CBSA control;

At Inland CBSA Service Locations

53. Audio-video **recordings** must not be used to support formal evaluation of individual employee performance.
54. The audio-video monitoring and recording technology shall not be used to monitor any area or activity outside of the CBSA's area of operation.
55. Audio-video monitoring and recording technology shall not be used to monitor any public or employee washroom, nor any lunch or change room.
56. Data collected from audio-video monitoring and recording technology shall not be used for any purpose other than those expressly identified in paragraphs 42 - 52.
57. In accordance with subsection 163.5(4) of the *Customs Act*, audio-video equipment cannot be used for the sole purpose of monitoring for Criminal Code offences.

Capture of Audio Information

58. The audio-capability of cameras located outside of interview rooms must remain deactivated until further notice.
59. The audio-capability of cameras located outside of areas where the CBSA interacts directly with the public in the discharge of its mandate must be disconnected, disabled or removed so that it meets the definition of non-audio capable cameras. For greater clarity this includes all audio-capable cameras outside of primary inspection lines (PIL), secondary areas, cash/service counters and interview rooms.
60. Even within these areas, any audio-capable cameras must be positioned to limit capture to interactions between the CBSA and the individual; not conversations between members of the public.
61. Existing audio-capable cameras that have the potential to capture private conversations must have the audio-capability disconnected, disabled or removed so that it meets the definition of non-audio capable cameras.
62. Programs Branch has assessed sites with existing audio-capable cameras outside of interview rooms to ensure they comply with this standard. The Regions must seek Programs Branch validation on any new installations involving audio-capable cameras.
63. Audio information which is inadvertently captured in a manner inconsistent with this policy cannot be used by the CBSA and must be destroyed. Details of this incident must be sent to Programs Branch via the AV Policy Inbox: [CBSA-ASFC_AV_Policy-Politique_AV](#)

Signage

64. Except as provided below, the use of any audio-video monitoring and recording technology by the CBSA in an area owned, operated or controlled by the CBSA **shall be made known** to CBSA employees and the public. Clear and visible signage indicating that an area is under audio-video monitoring or recording by the CBSA, including instructions to ask to speak with a supervisor or visit CBSA's website for more information, must be posted.
65. The specifications for the signage will be in accordance with the Treasury Board's Federal Identity Program requirements.
66. Signage is not required when monitoring or recording technology is used with the knowledge and consent of the person being monitored or recorded.

Storage and Access

Equipment

67. All audio-video recordings shall be securely stored as per CBSA policy on the storage of protected information when they are not in use. Audio-video recordings are classified as "Protected B." (Refer to Comptrollership Manual – Security Volume – Chapter 6: Storage of Sensitive Information and Assets).
68. The requirement for secure storage applies to any equipment containing recordings, such as: cameras, voice recorders and recording mediums (films, cassettes, discs, memory keys, etc). A record of access to the recordings and equipment shall be kept by way of electronic or manual log.
69. Only those persons who are trained to use the audio-video monitoring and recording equipment will be authorized to have access to or control of such equipment. Authorization must be provided in writing by the manager responsible for the facility in which the equipment is located and must specify the purpose(s) for which access and control is given.
70. For the purposes of this section, control means the ability to move, manipulate or otherwise guide the direction, focus or magnification of a camera by remote means and includes the ability to initiate, stop, reverse or overwrite audio or video recording.

Access to Records

71. It is the policy of the CBSA to limit and restrict access to records made from the use of any audio-video recording technology. Only persons who are authorized and whose work requires it as part of their official or assigned duties will be permitted to have access to records, to view and/or listen to, or make copies of records. This applies equally to records made by third parties and provided to the CBSA for any reason.

72. The following persons are authorized to access, to view and/or to listen to and make copies of records in accordance with paragraph 71, above:

- (a) The President, Executive Vice-President or any Vice President of the CBSA, or any person authorized by the President, Executive Vice-President or any Vice President of the CBSA;
- (b) A director general, director or manager of a headquarters program area, or an official of that program area who is authorized by their manager to have access to or to view records and who requires such access as a part of his or her official duties;
- (c) A regional director general, director or manager of a regional program area or an official of that program area authorized by their manager to have access to or to view records and who requires such access as a part of his or her official duties;
- (d) A director or chief of operations at any CBSA office in which the record is kept, or a superintendent or other official reporting to that chief who is authorized by that chief to have access to or to view records and who requires such access as a part of his or her official duties;
- (e) A regional or headquarters security official who requires such access as a part of his or her official duties;
- (f) The manager or an investigator of the Professional Standards Investigations Section of the Security and Professional Standards Directorate;

73. The following persons may be authorized to have access to and be permitted to view records and may make copies of records in accordance with paragraph 71, above:

- (a) An employee of the CBSA who is authorized to do so by a person listed in paragraph 72;
- (b) An official of a program area working within the mandate of the program and carrying out the duties expected of his/her position who is authorized to do so by a person listed in paragraph 72;
- (c) Any person authorized to have access to or to view or listen to a record in accordance with the provisions of the *Privacy Act*, the *Customs Act*, the *Immigration and Refugee Protection Act* or the *Proceeds of Crime Money Laundering and Terrorist Financing Act*, and the policies of the CBSA in respect of such access and its authorization who is authorized to do so by a person listed in paragraph 72.

Transmission of Audio-Video Data over Wireless Networks

74. All audio-video information transmitted over a wireless network must be transmitted in accordance with established CBSA/CRA protocols on wireless data transmission. Refer to CBSA's Policy on the use of Wireless Technology.

75. Any wireless transmission of audio-video data that is not in compliance with these protocols must cease immediately upon the implementation of this policy. The wireless transmission can only resume when certification from local IT and

evidence in respect of that person. These records will be retained and disposed of in accordance with the appropriate Institution Specific Disposition Authority (ISDA).

Recordings made by Third Parties

84. Any and all recordings made by a third party, such as an airport or bridge authority, and provided to the CBSA for any reason must be retained in accordance with paragraph 83.
85. The CBSA has a duty to ensure that the chain of custody of such recordings is maintained for court purposes and must store them securely in accordance with paragraph 67.
86. The CBSA will endeavour to enter into a memorandum of understanding with any authority that has installed cameras in CBSA areas for which the CBSA does not have principal control or use in order to ensure that CBSA information is not disclosed or shared with any third party without the consent of the CBSA.

Disclosure / Information Sharing

87. All disclosure of audio-video records must be made in accordance with the provisions of the *Customs Act*, the *Access to Information Act*, the *Privacy Act* and/or CBSA Disclosure Policy.
88. When an audio-video recording is disclosed in response to an ATIP request from an individual whose information is contained in the record, the identity and other personal information of other individuals in the audio-video recording who are not implicated in the request will be protected. If the personal information of a third party cannot be protected, and consent has not been provided for its disclosure, the audio-video record will not be disclosed.

Disposal of Recordings and Equipment

89. Upon the expiration of the retention period, recordings must be properly disposed of in accordance with CBSA policy. Refer to Comptrollership Manual – Security Volume, Chapter 8: Disposal of Sensitive Information and Assets.
90. Audio-video monitoring and recording equipment must also be disposed of in accordance with Comptrollership Manual – Security Volume, Chapter 8: Disposal of Sensitive Information and Assets.

Standards

91. The CBSA will establish and maintain specifications and technical standards for audio-video monitoring and recording technology equipment and other peripheral equipment. Specifications and technical standards will be based on the intended usage of equipment and on the need for compatibility and interoperability between

- (d) providing guidance when hiring external contractors to make sure that security and confidentiality are maintained.

96. The Information, Science and Technology Branch (Science and Engineering Directorate) is responsible for the following:

- (a) identifying, developing and testing new technology as it relates to audio-video monitoring or recording devices;
- (b) developing and maintaining specifications for CCTV cameras, recording devices and peripheral equipment in accordance with this policy.

97. The Operations Branch - Regions is responsible for:

- (a) complying with this policy and legislation on the use of audio-video monitoring and recording technology and retention of records;
- (b) reporting incidents of tampering, loss or damage to equipment or data;
- (c) communicating with headquarters program areas on issues related to equipment, technology and policy;
- (d) contacting the Science and Engineering Directorate for installation and / or replacement of new cameras, replacement of new recording systems and installation of new CCTV/AVMS technology;
- (e) contacting certified service providers for the regular maintenance and repairs of CCTV/AVMS equipment;
- (f) conducting an inventory as per the requirements of paragraph 92 within three (3) months of the implementation of this policy and for providing this information to the Emerging Border Programs Division of the Border Programs Directorate, Programs Branch;
- (g) maintaining regional inventory list of equipment, including the location and purpose of each camera, and for providing inventory updates to the Emerging Border Programs Division of the Border Programs Directorate, Programs Branch.

98. The Operations Branch – Headquarters is responsible for:

- (a) identifying operational impacts;
- (b) supporting the integrity and professional standards strategy;
- (c) ensuring that operational concerns raised by Regional Operations are brought forward to the Programs Branch.

99. Employees of the CBSA are responsible for:

- (a) complying with this policy;
- (b) reporting any misuse of audio-video monitoring or recording technology, unauthorized access to equipment or records or unauthorized listening, viewing, copying or release of records;
- (c) completing and submitting a Security Incident Report should theft and/or compromise of audio-video monitoring and recording technologies occur.

(Refer to: Comptrollership Manual – Security Volume – Chapter 15: Security Incident Reporting.)

References

Access to Information Act;
Canada Border Services Agency Act;
Canadian Charter of Rights and Freedoms;
Criminal Code;
Customs Act;
Federal Court Act;
Immigration and Refugee Protection Act;
Library and Archives of Canada Act;
Privacy Act;
CBSA, “D” Memorandum – D1-16-1;
CBSA, Records Retention and Disposition Policy;
CBSA Security Policies;
Government Security Policy (Treasury Board);
Library and Archives Canada – Multi-Institutional Disposition Authorities (MIDAs);
Guidelines for the Use of Video Surveillance of Public Places by Police and Law Enforcement Authorities (Office of the Privacy Commissioner).



OPERATIONAL BULLETIN: PRG-2015-31

TITLE: Examination of Digital Devices and Media at the Port of Entry – Guidelines

Date of Issue:	Mode(s):	Target Audience:	Area of Interest:
2015-06-30	All	National	Port of Entry

** UPDATE **

Please note that the December 8, 2017, Supreme Court of Canada decisions in *R. v. Marakah* and *R. v. Jones* **do not** require any change to existing guidance to CBSA officers included in both the present OB and [PRG-2017-61](#).

Details:

- The purpose of this operational bulletin is to provide guidance on a CBSA officer's authority to examine digital devices or media at ports of entry. Clarification will be provided on when such examinations should and can be performed, and will explain limitations to these authorities.

Authorities:

- Digital devices and media, along with digital documents and software, continue to be classified as 'goods' in the context of the border. A CBSA officer's authority to examine goods is specified under the *Customs Act* and the *Immigration and Refugee Protection Act* (IRPA).
- Paragraph 99(1)(a) of the *Customs Act* provides CBSA officers with the legislative authority to examine goods, including digital devices and media, for customs purposes only. Although there is no defined threshold for grounds to examine such devices, CBSA's current policy is that such examinations should not be conducted as a matter of routine; they may only be conducted if there is a multiplicity of indicators that evidence of contraventions may be found on the digital device or media.
- Subsection 139(1) of the IRPA allows for the search of digital devices and media at the ports of entry where there are reasonable grounds to believe that the person has not revealed their identity or has hidden, on or about their person, documents that are relevant to their admissibility; or has committed, or possesses documents that may be used in the commission of people smuggling, human trafficking, or document fraud. The purpose of this search must be confined to identifying the person, finding documents relevant to

admissibility or that may be used in the specified offences, or finding evidence of the specified offences.

- Examination of digital devices and media must **always** be performed with a clear nexus to administering or enforcing CBSA-mandated program legislation that governs the cross-border movement of people and goods, plants and animals. CBSA officers shall not examine digital devices and media with the sole or primary purpose of looking for evidence of a criminal offence under any Act of Parliament. Officers must be able to explain their reasoning for examining the device, and how each type of information, computer/device program and/or application they examine may reasonably be expected to confirm or refute those concerns. The officer's notes shall clearly articulate the types of data they examined, and their reason for doing so.

Actions required by CBSA officers:

- Where there is a multiplicity of indicators, or further to the discovery of undeclared, prohibited, or falsely reported goods, officers are authorized to conduct progressive examinations of digital devices and media for evidence of contraventions or to support allegations.
- Evidence may include, for example, electronic receipts for goods; information that refers to the acquisition or origin of the goods; or information that may afford evidence of a contravention to CBSA-mandated legislation that governs the admissibility of people and goods, plants and animals into and out of Canada. Such evidence may, for example, uncover the following: a confirmation of identity; receipts and invoices for imported goods; contraband smuggling; or, the importation of obscenity, hate propaganda or child pornography.
- Where the identity or admissibility of a traveller is in question, officers are justified in performing examinations of digital devices and media to discover the traveller's true identity, evidence of false identities, or other documentary evidence pertaining to admissibility.
- Where evidence of a criminal offence is discovered during the examination process, officers must be cognisant of where the regulatory examination crosses over to the realm of a criminal investigation. Officers must determine on a case-by-case basis, through consultation with their supervisor, whether or not to continue the regulatory examination and identify any possible impacts on potential criminal investigations.
- Officers must follow the [CBSA Enforcement Manual Part 9](#) instructions on securing evidence and on referrals to Criminal Investigations, as well as following regional requirements for referrals to Inland Enforcement or Intelligence.
- CBSA officers shall conduct examinations of digital devices and media with as much respect for the traveller's privacy as possible, considering that these examinations are usually more personal in nature than baggage examinations.

Examination Progression

- Prior to examination of digital devices and media, and where possible, CBSA officers shall disable wireless and Internet connectivity (i.e. set to airplane mode) to limit the ability of the device to connect to remote hosts or services. This will reduce the possibility of triggering remote wiping software; inadvertently accessing the Internet or other data stored externally; or changing version numbers or dates.
- Initial examinations of digital devices and media should be cursory in nature and increase in intensity based on emerging indicators.
- CBSA officers shall only examine what is stored within the device. Officers are not to read emails on digital devices and media unless the information is already downloaded and has been opened (usually marked as read).
- CBSA officers shall notate in their notebooks the indicators that led to the progressive search of the digital device or media; what areas of the device or media were accessed during the search; and why. This is to protect both the integrity of the information within the digital device and the officer.

Passwords and Enforcement

- With the exception of devices that are biometrically (i.e. fingerprint) protected, CBSA officers shall not allow a traveller to input a password into a digital device or media themselves. This practice reduces the risk of any contents being altered and allows for the continuity of evidence.
- In instances where access to digital devices and media are password protected, officers are to request the password to access the device and record it, as well as any alternate passwords provided, in their officer notebook.
- In cases where the device is biometrically protected, CBSA officers may allow the traveller to input the biometric information while the officer monitors and controls the device (for example, the officer may hold the device while the traveller allows the device to read their fingerprint). Should the CBSA officer find information that provides evidence of a contravention, they should then deactivate the password protection on the device or media.
- Passwords are not to be sought to gain access to any type of account (including any social, professional, corporate, or user accounts), files or information that might potentially be stored remotely or on-line. CBSA officers may only request and make note of passwords required to gain access to information or files if the information or file is known or suspected to exist within the digital device or media being examined.
- Conversely, a traveller may voluntarily provide information and passwords to access external data in certain circumstances in order to show compliance; CBSA officers should advise travellers that they are not required to access or provide external information, but may voluntarily choose to do so. The login information or password shall not be compelled or recorded in these cases.

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- If a traveller refuses to provide a password to allow examination of the digital device, media or the documents contained therein, or if there are technical difficulties that prevent a CBSA officer from examining the digital device or media, the device or media may be detained by the CBSA officer under the authority of Section 101 of the *Customs Act*, on the form K26, *Notice of Detention*, for examination by a CBSA expert trained in digital forensic examinations. For IRPA-related examinations, the device or media may be detained under the authority of subsection 140 (1) of the IRPA on the form IMM5265.
- Until further instructions are issued, CBSA officers shall not arrest a traveller for hindering (Section 153.1 of the *Customs Act*) or for obstruction (paragraph 129(1)(d) of IRPA) solely for refusing to provide a password. Though such actions appear to be legally supported, a restrained approach will be adopted until the matter is settled in ongoing court proceedings.
- At the conclusion of a non-resultant examination, the traveller shall be advised that though their password will be protected in accordance with privacy laws, they may nonetheless change it if they wish to do so.

Contact Information:

Program Compliance and Outreach Division, Traveller Programs Directorate

If you have any further questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Port of Entry Operations' generic inbox: [CBSA-ASFC_Ops_Travellers-Voyageurs](#).

Approved by: Barry Kong, Director
Programs Compliance and Outreach Division
Traveller Programs Directorate
Programs Branch

Effective Date: 2015-06-30

Updated: 2018-01-11

Additional bulletins:



OPERATIONAL BULLETIN: PRG-2017-61

TITLE: Collection of data related to the examination of travellers' digital devices – interim reporting requirement

Date of Issue:	Mode(s):	Target Audience:	Area of Interest:
2017-11-17	All	National	Traveller

Details:

- Effective November 20, 2017, border services officers (BSO) must report all instances where the data contained on the digital device(s) of a traveller is examined for the purposes of any of the acts administered by the CBSA.
- As per [Operational Bulletin PRG-2015-31](#), where there is a multiplicity of indicators, or further to the discovery of undeclared, prohibited, or falsely reported goods, officers are authorized to conduct progressive examinations of digital devices and media for evidence of contraventions or to support allegations. For the purposes of this policy, each digital device examination conducted as per this directive must be recorded on the port's tracking sheet.
- Digital devices for the purpose of this policy include cell phones, laptops, tablets, personal digital assistants and desktop computers.
- This procedure must be followed whether the outcome of the examination was resultant or non-resultant.
- A resultant outcome is defined as a situation whereby the officer has identified, during the examination process, a contravention to the *Customs Act* and/or any other act of Parliament (ex: *Criminal Code*, *Immigration and Refugee Protection Act*, *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*).
- This policy is in effect until a long-term solution is developed to collect this information.

Actions required by all operational staff:

- As soon as reasonably possible after examining data from the digital device(s) of a traveller, BSOs must report the exam on the digital examination tracking sheet provided by the Superintendent.
- In situations where data is examined from multiple devices belonging to the same traveller, this must count as only **one** examination for the purposes of this exercise.
- Consolidated weekly data must be compiled and submitted by end of shift Wednesday for the previous week (the weekly cycle is from 00:00 Monday to Sunday 23:59 local time); the Superintendent or their designate must use the [interim reporting tool](#) to input the examination data.
- If no examinations of travellers' digital devices took place during a particular week, that port of entry must report zeroes for that week.
- The direction contained in [PRG-2015-31: Examinations of Digital Devices and Media at Ports of Entry – Guidelines](#) is still in effect, including the note-taking requirements.

Contact Information:

Program Compliance and Outreach Division, Traveller Programs Directorate

If you have any further questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Port of Entry Operations' generic inbox: [CBSA-ASFC_Ops_Travellers-Voyageurs](#).

Approved by: André Lamoureux, a/Director
Program Compliance and Outreach Division
Traveller Programs Directorate
Programs Branch

Effective Date: 2017-11-20

Updated: N/A

Additional bulletins:

Part 2 Chapter 2

CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer and enforce Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its regulations.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

The Proceeds of Crime (Money Laundering) and Terrorist Financing Act
(PCMLTFA)

3. Part 2 – Provides the obligation to report to a Border Services Officer (BSO) the cross-border movement of currency or monetary instruments of a value equal to or greater than a determined threshold, as well as the authority for the Canada Border Services Agency (CBSA) to administer and enforce Part 2 of the Act.

Cross-Border Currency and Monetary Instruments Reporting Regulations

4. Establishes the threshold amount for currency reporting at CAN \$10,000 or its equivalent after conversion, the general manner of reporting, retention, the prescribed amount of the penalties, and administrative details.

PURPOSE AND SCOPE

5. The purpose of this policy is to provide guidelines to CBSA officers in the event of imports or exports of currency or monetary instruments totalling CAN \$10,000 or greater.
6. This policy applies to all CBSA officers in all modes of transportation.

BACKGROUND

7. Organized crime and money laundering are problems that affect all Canadians. Money laundering is a serious criminal offence entailing the illegal movement of funds, estimated to be billions of dollars, through Canada each year. The impact of organized crime and money laundering goes beyond easily recognized consequences such as violence and economic losses to include less visible social costs.
8. Money laundering is the process by which "dirty money" generated by criminal activities is converted into assets that cannot be easily traced back to their illegal origins. A significant proportion is linked to profits from the illicit drug trade but

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CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

proceeds from other crimes, including burglaries and cigarette smuggling, are also involved. Money laundering activities, when carried out through financial institutions, can have an adverse effect on their reputations.

9. In the past several years, the federal government has taken a number of steps against organized crime and terrorist financing activities. New provisions were added in the *Criminal Code* and other federal statutes, such as the *Customs Act*, to target criminal organizations and to seize the proceeds of their illegal activities.
10. The detection of money associated to the proceeds of crime at the border had been particularly problematic, as CBSA officers did not have the authority to question persons on importation or exportation of currency under the *Customs Act*. Illegal money encountered during the normal customs process was only seized under the high standards of the *Criminal Code*.
11. In view of these gaps, the federal government incorporated the mandatory reporting of suspicious transactions and cross-border movements of currency and monetary instruments into the new *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Part 2 of the PCMLTFA, from which the Cross-Border Currency and Monetary Instruments Reporting Regulations stem, came into effect January 6, 2003. Part 2 imposes on every person and entity the obligation to report the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed threshold of CAN \$10,000. The objective of the Act is to implement specific measures to detect and deter money laundering and terrorist financing activities. It also facilitates the investigation and prosecution of money laundering offences and terrorist financing offences by requiring the reporting of suspicious financial transactions and the cross-border movements of currency and monetary instruments.

POLICY GUIDELINES

Note: Unless otherwise specified, all references to “currency” and “monetary instruments” refer to those equal to or greater than CAN \$10,000, or its equivalent in a foreign currency.

General

12. There is no limitation on the total amount of currency or monetary instruments that may be brought into or taken out of Canada, nor is it illegal to do so.
13. Foreign currency will be considered to have the same value of Canadian currency based on the Bank of Canada official conversion rate of the day. You can find the official conversion rate of the day on the Customs Commercial System (CCS) or the Bank of Canada website.

Note: If no official conversion rate is set out for that currency, use the conversion rate

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CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

that the person or entity would use for that currency in the normal course of business at the time of the importation or exportation.

14. The reporting of currency must be made in writing on the appropriate form (E677, E667, and/or E668) and must be signed and submitted by the importer/exporter.

The Cross-Border Currency or Monetary Instruments Report – Individual (E677) form is used to report situations where the importer or exporter physically carries the currency or monetary instruments across the border.

The Cross-Border Currency or Monetary Instruments Report – General (E667) form is used to report all other situations such as when mailing, shipping by courier, or transporting on someone else's behalf. In the case of mail, the exporter who is sending the currency or monetary instruments to Canada is required to affix a Customs Declaration form CN23 on the outside of the mail item and include a completed E667 currency report inside the item.

The Cross-Border Currency or Monetary Instruments Report Made by Person in Charge of Conveyance (E668) form is used to consolidate all currency and monetary instruments transported by the person in charge of a conveyance. In addition, the importer or exporter also has to complete an E667.

15. CBSA officers may question persons regarding the possession of currency or monetary instruments, in accordance with their authorities under the PCMLTFA.
16. Where a completed currency report is submitted and complies with the conditions of this policy, it will be considered to meet the reporting requirements of the PCMLTFA.

Note: The requirements for import and export reporting require the same forms and data.

17. Monetary instruments means the following instruments in bearer form (blank, cash, to the bearer) or in such other form as title to them passes on delivery, namely,
 - (a) securities, including stocks, bonds, debentures and treasury bills; and
 - (b) negotiable instruments, including bank drafts, cheques, promissory notes, travellers' cheques and money orders, other than warehouse receipts or bills of lading.

Note: For greater certainty, this definition does not apply to securities or negotiable instruments that bear restrictive endorsements or a stamp for the purposes of clearing or are made payable to a named person and have not been endorsed.

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CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

Importing – Individuals

18. Currency that is in the possession of a person must be reported at the point that the person reports to CBSA.

Importations by Mail

19. If a Universal Postal Convention (UPC) declaration form indicates currency or monetary instruments, however, the E667 currency report is either missing or incomplete, the currency will be retained and a retention notice will be issued to the exporter or if unattainable to the importer.
20. The exporter who is sending the currency or monetary instruments to Canada must affix a UPC declaration form to the outside and include a completed E667 currency report inside of the item.
21. Currency that is mailed from a location outside of Canada to another destination outside of Canada but transits through Canada by post are not required to be reported (e.g. St. Pierre et Miquelon).

Importations by Rail

22. The person in charge of a conveyance must report currency at the CBSA office that is nearest the place of importation open for business.
23. If currency is in the possession of a person, it is that person's responsibility to report it to the CBSA at the CBSA office nearest to the place of importation that is open for business.
24. Currency that is in the possession of a crewmember aboard a freight train must be reported immediately at a place specified by an officer. The crewmember will be processed as a traveller.

Commercial Importations by Air

25. Currency, which is transported by an air transportation company, may be reported at the CBSA office of the airport of destination as shown on the air waybill (provided the money is not offloaded before its destination).
26. The person in charge of a conveyance must present the completed currency report.

Reporting in the Air Travellers Mode

27. Primary questioning regarding currency is not required as the completion of a Customs Declaration Card (E311) fulfills the primary reporting requirements.

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CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

Importing by Marine Vessel

28. Currency or monetary instruments on board a cargo or cruise ship entering Canada whose final destination is a place other than Canada, do not have to be reported provided that the currency or monetary instruments will not leave the ship.
29. Currency and monetary instruments on board a cargo or cruise ship, carried on behalf of the shipping line entering Canada whose final destination is Canada, must be reported.
30. Declarations must be accompanied by the appropriate cross-border currency and monetary instruments report forms.
31. Where permitted by the CBSA's process, crewmembers and passengers may report currency and monetary instruments using a Customs Declaration Card (E311).
32. A currency reporting form must also be submitted at the time of report.
33. The reporting requirements for passengers, merchants, and crewmembers are an individual responsibility.

Note: Under these circumstances there is no liability on behalf of the cargo or cruise ship.

Reporting at Point of Clearance

34. When a person onboard a commercial carrier arrives in Canada and whose destination is another place in Canada where there is a CBSA office, a currency report may be made at the point of entry.
35. A currency declaration must be made when a person disembarks at a point where they are required to report to the CBSA.

In-transit Passengers

36. Persons aboard a commercial passenger conveyance transiting through Canada are not required to report currency in their possession.
37. Other than to be transferred under the CBSA's control to another commercial conveyance for departure to a place outside of Canada, currency will not be removed from an in-transit area.
38. A currency report must be made if a person disembarks at a point that they are required to report to CBSA.

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Commercial Exportations

47. The exporter of currency, which is exported by a courier or transported on someone's behalf, must make a currency report.
48. The person in charge of a conveyance will present the completed currency report at the place of exportation.

Exporting – Marine vessels

49. Currency and monetary instruments on board a cruise or a cargo ship, as "cash to master" or carried on behalf of the shipping line departing from Canada will have to be reported using the appropriate cross-border currency and monetary instruments report forms at the time of departure.

Note: This does not include ships that are departing from Canada that imported currency or monetary instruments that were not required to report the currency or monetary instruments upon import.

Telephone Reporting Centres - Exportation

50. No provisions exist to utilize the Telephone Reporting Centre to declare the exportation of currency.

Other Exportations

51. In any other case, a person on whose behalf currency is being exported must make a currency declaration.
52. Currency reports must be made at the CBSA office at the place of exportation.

Reporting Exceptions - Diplomats

53. In accordance with these policy guidelines, it is the policy of the CBSA to give precedence to the provisions of *the Foreign Missions and International Organizations Act* over the reporting requirements of the PCMLTFA.

Reporting Exceptions - Bank of Canada

54. The PCMLTFA exempts the Bank of Canada from all import/export of currency reporting requirements.

Exemption Applicable to Imported Shares

55. A person or entity is not required to make a report under subsection 12(1) of the

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PCMLTFA with respect to stocks, bonds and debentures imported into Canada by courier or as mail if the importer is a financial entity or a securities dealer as defined in subsection 1(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* or a transfer agent.

Duty to Answer and Comply

56. Upon report of currency, a person making the report is obliged to answer truthfully any questions that an officer asks with respect to the information required to be in the report.
57. Upon request by an officer, a person making a report is required to present the currency, unload any conveyance or part of a conveyance or baggage, and open or unpack any package or container that the officer wishes to examine.

Cancellation of Reports

58. A person who declares currency may up to the time of a full report advise that they no longer wish to proceed with the importation or exportation.
59. A person who does not submit a currency report will be allowed to withdraw their intent to import or export their currency and/or monetary instruments.

Note: This right does not apply to **unreported** currency or monetary instruments.

Verification

60. When a person has made a currency report; an officer may examine the currency for the purposes of verifying the report.

Search of Persons

61. When an officer suspects on reasonable grounds that the PCMLTFA has been violated or that a person is attempting to circumvent the PCMLTFA, the officer may search any person:
 - a) who has arrived in Canada, within a reasonable time after their arrival in Canada
 - b) about to leave Canada, at any time before their departure
 - c) who has had access to an area for use by persons about to leave Canada, and who leaves that area but does not leave Canada, within a reasonable time after they leave the area.

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Note: It is recognized that during the verification of currency, occasionally errors will be encountered.

68. There is no legal provision relating to errors made regarding amounts being reported and it is not mandatory to apply a penalty.
69. It is the responsibility of the officer to determine if a penalty is reasonable under the circumstances.

Note: It is recognized that not all errors are intentional. Negligence, carelessness, and lack of knowledge on the part of a person making a report are factors worthy of consideration when deciding whether or not to proceed with a penalty.

Benefit of Doubt

70. It is the policy of the CBSA to extend the benefit of the doubt to persons when it appears evident that they were not aware of the CBSA's requirements.
 Note: For the purposes of administering the PCMLTFA, officers are encouraged to use the same benefit of the doubt as is utilized when enforcing the *Customs Act*.

Retention Pending Full Report

71. When a person indicates to an officer that they have currency or monetary instruments, the officer may retain the currency or monetary instruments pending completion of the report. The physical retention and safekeeping of the currency or monetary instruments will be done in accordance with the CBSA policies and procedures published in the Comptrollership Manual, Finance Volume.

Note: It is CBSA policy not to perform courtesy holds of currency and monetary instruments.

72. A notice will be given or sent by registered mail without delay.

Note: The regulations require that a notice be sent within 60 days of retention.

Note: providing a copy of the K24 (Non-Monetary Receipt) will fulfill a CBSA officer's "notice" obligation of the PCMLTFA.

73. The currency will no longer be retained, if the importer or exporter satisfies the officer that the reporting requirements have been met or that they have decided not to proceed with the importation or exportation within the seven days following the issuance of the notice.
74. When the requirements are not met within the prescribed period the currency or monetary instruments will be considered abandoned to the Crown.

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75. The prescribed seven-day reporting period will be replaced with a 30-day period for the purposes of a courier or mail shipment.

Seizures

76. If a person has not specifically been questioned concerning currency, penalties will not normally be levied unless there is clear evidence of intent to contravene the PCMLTFA.
77. Officers, who believe on reasonable grounds that subsection 12(1) of the PCMLTFA (reporting requirements) has been violated, may seize as forfeit currency or monetary instruments, as per subsection 18(1) of the PCMLTFA.
78. An officer must impose the prescribed penalty when a seizure occurs.
79. The following terms of release will be offered for currency or monetary instruments:

Level 1

- a) \$250, in the case of a person or entity who:
 - I. has not concealed the currency or monetary instruments,
 - II. has made a full disclosure of the facts concerning the currency or monetary instruments on their discovery, and
 - III. has no previous seizures under the PCMLTFA.

Level 2

- b) \$2,500, in the case of a person or entity who:
 - I. has concealed the currency or monetary instruments, other than by means of using a false compartment in a conveyance, or
 - II. has made a false statement with respect to the currency or monetary instruments, or
 - III. has a previous seizure under the PCMLTFA, other than in respect of any type of concealment or for making false statements with respect to the currency or monetary instruments.

Level 3

- c) \$5,000, in the case of a person or entity who:
 - I. has concealed the currency or monetary instruments by using a false compartment in a conveyance, or
 - II. has a previous seizure under the PCMLTFA for any type of concealment or for making a false statement with respect to the currency or monetary instruments seized under the PCMLTFA:
80. No terms of release are offered for currency or monetary instruments suspected to be related to proceeds of crime or terrorist finances:

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Level 4

No terms of release: Officers who suspect on reasonable grounds that non-reported currency or monetary instruments are proceeds of crime or terrorist finances, may seize currency with no terms of release.

81. A person who reports the importation or exportation of currency or monetary instruments is required to report the full and accurate value of such currency or monetary instruments. Consequently, where currency or monetary instruments other than that reported are uncovered, both the value equal to the value reported and the value greater than the value reported are subject to seizure.
82. When seizing monetary instruments issued by a financial institution, the seizing officer will suspend the items by immediately notifying the appropriate financial institution by telephone.
83. CBSA officers have the discretion to leave a minimal amount of money (humanitarian reasons) to a person when they cannot pay the penalty imposed for non-reporting of currency and they are left without resources.

Note: The amount of money to be left for a person may be what the officer considers reasonable for the circumstances (e.g. money for food, gas or tolls and distance from residence). The officer should ensure that notes are taken as to the amount of money left in the custody of the traveller and the reasons.

Note: This money is not included in the actual amount seized.

84. When seizing currency and/or monetary instruments, it is imperative that detailed notes be taken. Seizure documentation and narrative report must be completed as soon as possible following any seizure action. Reports should provide a clear articulation of the indicators gathered, supporting the decision to seize.

Note: Reports should be based on the officer's recollection of events with the aid of notes taken during or immediately after the seizure. The style of report writing is optional, however all reports must be logical, objective and professional. Remarks which might be interpreted as slanderous must not be included. Only the facts of the occurrence should be included.

Establishing Proceeds of Crime Criteria Under the PCMLTFA

85. To seize with no terms of release, CBSA officers must have reasonable grounds to suspect that currency or monetary instruments are proceeds of crime or terrorist finances.

Note: Proceeds of crime means any property, benefit or advantage, within or outside

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Canada, obtained or derived directly or indirectly as a result of “the commission in Canada of an enterprise crime offence or a designated substance offence, or an act or omission anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offence or a designated substance offence.”

Note: The officer must have reasonable grounds to suspect. A reasonable suspicion is not arbitrary, not random, and not based on irrelevant factors. Mere suspicion without an articulable reason is not enough, but a suspicion based on the experience of an officer together with the facts of a given case will be sufficient.

86. Persons who fail to properly report currency or monetary instruments will not be arrested for violations of the PCMLTFA, regardless of whether or not the seized currency or monetary instruments are suspected proceeds of crime.

Note: Failure to properly report currency or monetary instruments is a civil offence.

87. When currency or monetary instruments are reported and there are reasonable grounds to suspect that they are proceeds of crime or terrorist finances, they cannot be seized under the PCMLTFA. In consultation with the Integrated Proceeds of Crime unit (IPOC), they could be seized under the *Criminal Code*.

Written Notice

88. Giving a person a copy of a seizure receipt will fulfill a CBSA officer's “written notice” obligation of the PCMLTFA.

Note: The PCMLTFA legislates that an officer who seizes currency must give the person “written notice” of the seizure and of the right to appeal. Providing a copy of the K19C –Seizure Receipt – Cross-Border Currency and Monetary Instruments satisfies this obligation.

Disposition

89. The moment currency is seized it becomes the property of the Crown.
Note: As the person from whom it was seized no longer owns the property, the penalty may not be withdrawn from the currency that has been seized.
90. Seizing officers should attempt to determine when a person would be able to gain the release of the seized currency or monetary instruments.

Note: A person may not have the means to pay for the release of the seized currency or monetary instruments at the time of the seizure.

91. Should a person indicate that they wish to make the seizure payment within a reasonable amount of time, the currency or monetary instruments should be held under the CBSA's control pending release.

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92. The hold-for-payment process is intended to allow persons/entities to gain release of their seized currency or monetary instruments within a reasonable amount of time. Depositing or forwarding it to Public Works and Government Services Canada / Seized Property Management (PWGSC/SPM) may delay its return.

Note: Should the circumstances of the seizure provide any security concerns, the currency or monetary instruments are to be deposited or transferred to PWGSC/SPM immediately.

93. Upon payment of the penalty, currency will be returned to either the importer/exporter or rightful owner.
94. You must ensure that the disposition of the currency is recorded on the Confirmation of the Return of Seized Currency and/or Monetary Instruments (Appendix B), the K19 and/or the Integrated Customs Enforcement System (ICES). Currency and Monetary instruments that are seized and not subsequently released are to be forwarded to PWGSC/SPM in accordance with established procedures for handling public funds received at the port of entry.

Forfeiture

95. All retained currency or monetary instruments will become forfeited, following the completion of the notification period:
- a) 30 days after the day on which the retention notice was given for importations or exportations by courier or as mail;
 - b) In any other case, seven days after the day on which the retention notice is given or sent.
96. All forfeited currency and monetary instruments must be deposited or forwarded to PWGSC/SPM.
97. Circumstances of the forfeiture must be forwarded to the Programs Branch at cbcr.dmte@cbsa-asfc.gc.ca.

Transfer of Monies

98. Currency that is or becomes forfeited or is seized and the financial penalties associated with the PCMLTFA must be promptly deposited to the credit of the Receiver General and transferred by the Interdepartmental Settlement process to PWGSC or, if the currency is not acceptable for deposit by Canadian financial institutions, forwarded directly to PWGSC/SPM.
99. The safekeeping and physical movement of the currency and monetary instruments shall be done in accordance with CBSA financial policy and procedures published in

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the Comptrollership Manual, Finance Volume. The transportation of such monetary items either for deposit to the credit of the Receiver General or directly to PWGSC/SPM shall be in accordance with secure transportation procedures prescribed by the CBSA Corporate Security and Internal Affairs Division or by PWGSC/SPM.

100. Should the approved standards be considered inappropriate due to the circumstances of the seizure, local management may authorize an alternate method for moving the currency.
101. Officer safety will remain the highest concern, and must be taken into consideration when transferring money.

Request for Review of a Seizure Process

102. Within 30 days after the date of the seizure, the Recourse Directorate or a border services officer may:
 - a) cancel the seizure, or cancel or refund the penalty if it is satisfied that there was no contravention; or
 - b) reduce the penalty or refund the excess amount of the penalty collected if there was a contravention but the Recourse Directorate considers that there was an error with respect to the penalty assessed or collected.
103. Within 90 days after the date of the seizure, the person from whom the currency was seized, or the lawful owner, has the right to request a decision from the Minister in the enforcement action.

Note: The PCMLTFA details the provisions for disputes of currency seizures.

104. The Recourse Directorate has been delegated to act on behalf of the Minister in the seizure of currency.
105. The request for review must be sent to the Recourse Directorate.
106. When a dispute is received, Recourse Directorate will act on behalf of the President.

Note: The PCMLTFA requires that the President, without delay, serve written notice (Notice of Reasons for Action) of the circumstances of the seizure to the person who requested a review.

107. The Recourse Directorate will forward to the appellant, by registered mail, a letter outlining the reasons for the seizure.

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108. When money laundering or terrorist financing charges are laid in connection with a seizure, the Recourse Directorate may delay rendering a decision to no later than 30 days after the conclusion of the court proceedings.
109. If the Recourse Directorate finds that there has been no contravention, they will notify PWGSC/SPM to refund the penalty that was paid for return of the currency; or to return the monetary instruments; or return an amount equal to the value of the money seized.
110. A person, who has requested an appeal, may within 90 days after being notified of the decision, appeal to the Federal Court.
111. When brought before the Federal Court of Canada, Trial Division, the matter will be turned over to the Department of Justice.
112. The Recourse Directorate will continue to oversee and instruct legal counsel on the proceedings and will have the final say in the disposition of any appeal.

Third Party Claims

113. A third party claiming interest in seized currency may, within 90 days after a seizure, make an application in writing to the court for a third party claim.
114. The court receiving the request must hear the appeal within 30 days of receiving the application.
115. It is the responsibility of the third party making the claim to serve notice of an application and of a hearing to the President, or an officer designated by the President (Recourse Directorate).
116. When civil litigation becomes necessary, third party cases will be turned over to the Justice Department and the Recourse Directorate will oversee and instruct legal counsel on the proceedings and will have the final say in the position taken by the CBSA in contesting a third party application.

Note: The applicant must prove that their interest in the currency was acquired in good faith prior to the contravention; that the applicant is innocent of any complicity resulting in the contravention; and that they exercised reasonable care to ensure that the currency would be reported.

117. On final forfeiture of currency and in accordance with the court order, the Recourse Directorate on behalf of the President will instruct the Minister of Public Works and Government Services to return to the applicant any seized currency or monetary instruments or an amount calculated on the basis of their interest as declared in the

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court order.

118. Either the CBSA or the third party making the application may appeal an order made by the court.

Disclosure by the CBSA

119. Information obtained under the PCMLTFA is not CBSA information and has to be used and disclosed only as provided for under the PCMLTFA.
120. The exception to the disclosure of information is the forwarding of reports presented by individuals and entities to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).
121. Officers may disclose information to FINTRAC if they have reasonable grounds to suspect that the information would be of assistance to FINTRAC in the detection, prevention, or deterrence of money laundering or terrorist financing.
122. Information obtained under the PCMLTFA may be used internally when it is relevant to the administration and enforcement of that Act, the *Customs Act* or in determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act* or is relevant to an offence under any of sections 117 to 119, 126 and 127 of that Act.
123. Information gathered as a result of the administration or enforcement of the PCMLTFA may be disclosed, to the appropriate police force, if an officer has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering or terrorist financing offence.
124. If an officer decides to disclose information gathered under the PCMLTFA, the Act requires that the officer record in writing the reasons for the decision. It is the policy of the CBSA that such disclosures of information be conducted by the CBSA Integrated Proceeds of Crime (IPOC) members or by a person acting on their behalf (Intelligence staff).

Disclosure by FINTRAC

125. The PCMLTFA permits the disclosure of information to the CBSA where FINTRAC determines that information is relevant to an offence related to the importation of goods, which are prohibited, controlled or regulated under the *Customs Act* or is relevant in determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act* or is relevant to an offence under any of sections 117 to 119, 126 and 127 of that Act and money laundering or the financing of terrorist activities

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Disclosure during Court proceedings

126. It is the policy of the Agency that the procedures detailed in the Customs Enforcement Manual, Part 9, Chapter 4, will be followed when a BSO receives a subpoena to testify regarding the PCMLTFA. A person served with a subpoena is required to comply with the order as it pertains to legal proceedings that relate to the administration or enforcement of the PCMLTFA.

Disclosure to the Department of Citizenship and Immigration

127. The PCMLTFA allows the CBSA to disclose information obtained during the enforcement or administration of the PCMLTFA to Citizenship and Immigration Canada (CIC) when it would be relevant in determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act*.

Note: FINTRAC may disclose information directly to CIC if they believe that the information is relevant to promoting the objectives of the *Immigration and Refugee Protection Act* (IRPA).

Counterfeit Currency/Monetary Instruments

128. Counterfeit currency and monetary instruments are not considered legal tender and are therefore outside of the realm of the PCMLTFA.

ROLES AND RESPONSIBILITIES CBSA

Officers

129. CBSA officers are responsible for:
- a) facilitating the reporting of currency and monetary instruments equal to or greater than CAN \$10,000 under the PCMLTFA;
 - b) seizing non-reported currency and monetary instruments equal to or greater than CAN \$10,000 under the PCMLTFA, when appropriate;
 - c) adhering to the personal search policy and procedures;
 - d) exercising diligence, due care and comply with the relevant financial control policies, guidelines and procedures; and
 - e) updating the appropriate checklist.

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PROCEDURES

Reporting

133. When referring a person for examination, ask them if they are in possession of currency or monetary instruments equal to or greater than a value of CAN \$10,000, after conversion.
134. When a person declares that they are in possession of currency or monetary instruments equal to or greater than a value of CAN \$10,000, ask additional primary questions when required.

Note: Persons will be offered the opportunity to make a full and complete declaration.

Common Elements to All Modes

Note: For all modes of importation and exportation, common elements exist and they are as follows.

135. Review the documentation (E677, E667 and/or E668) to ensure that all fields are completed to guarantee that all necessary information is provided
136. Ensure that reports are completed in a legible manner in one of the two official languages to allow accuracy of data capture
137. Ensure that E668 reports always accompany E667 reports. They must be sorted and attached together.
138. Eliminate the use of non-prescribed forms such as foreign declaration forms or commercial processing forms and replace them with the prescribed reports (E677, E667 and E668)
139. If all fields are completed, initial, date stamp, and retain the currency report (E677 or E667 and/or E668) for processing. All reports should be stamped at the time of importation or exportation to demonstrate that the legislative requirement to report to an officer has been met and to ensure the location where the report was submitted is clearly identified.
140. Do not provide the person/carrier a receipt.

Note: Acceptance of the reports fulfills the reporting requirements of the individual/courier/transporter. No further documentation will be required.

141. Release the person/courier/transporter if you do not feel that a secondary examination or verification is required.

Reporting Procedures in the Highway Travellers Mode

142. Ask persons entering Canada specifically whether they have in their possession, or in their vehicle, currency or monetary instruments that are equal to or greater than a CAN \$10,000.
143. If a person declares that they have currency or monetary instruments greater than CAN \$10,000, advise them that they are required to submit a currency report.

Note: Refer to the Appendices for a sample of the forms.

144. If a person is in possession of a completed currency report, accept the report at primary.
145. If a person is not in possession of a completed currency report or if a secondary examination/verification is required, refer them to secondary.
146. When making a secondary referral:
 - a) indicate the currency declaration on the E67; and
 - b) indicate the amount of currency and country of origin in the E67 comments field (i.e. \$12,000 USD).

Note: The E67 Secondary Referral card has been modified to include a currency field

Reporting in the Highway Commercial Mode

147. The importer/exporter of currency is required to report currency brought in or out of Canada by courier or transporter.

Note: At the primary inspection line a person in charge of a conveyance may present a completed currency report form or make a verbal declaration indicating that they are in possession of currency or monetary instruments.

148. Refer couriers and transporters making verbal declarations for documentation.

Reporting in the Air Travellers Mode

149. When an E311 or primary questioning indicates a currency declaration, ask the person if they have a completed currency report.

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150. If a person presents a completed currency report, accept the report at primary.
151. If a person is not in possession of a completed currency report, or if an examination/verification is required, refer them to secondary.
152. Mark the E311 to indicate that a currency report is required, indicate the amount of currency and country of origin.

Reporting in the Marine Mode

153. The Ship Master will indicate on the Ships Stores Declaration (E1) if they are in possession or control of currency or monetary instruments totalling CAN \$10,000 or more.
154. If the Ship Master declares an amount of CAN \$10,000 or more, the E1 must be submitted with a completed currency report (E667 and E668).
155. Crewmembers with CAN \$10,000 or more in currency or monetary instruments must declare it on the Crew's Effects Declaration (Y14) or the Customs Declaration Card (E311) and be accompanied by a completed currency report.
156. If a person declares that they have currency or monetary instruments greater than CAN \$10,000, advise them that they are required to submit a currency report.

Note: Refer to the Appendices for a sample of the forms.

157. If a person is in possession of a completed currency report, accept the report at primary.
158. If a person is not in possession of a completed currency report or if a secondary examination/verification is required, refer them to secondary.

Mail

159. When processing declared currency, open the package and retrieve the currency report.
160. If the currency report is complete, consider the reporting requirements of the PCMLTFA to be met.
161. If a UPC declaration form indicates currency or monetary instruments, however the report is either missing or incomplete, retain the currency.

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162. Issue a retention notice to the exporter. If the exporter's address is not known, notify the importer

Note: Upon receipt of the retention notice, the exporter must report the currency at the CBSA office indicated on the notice. Report to the CBSA office and completion of the currency report forms, will fulfill the reporting requirements of the PCMLTFA.

Telephone Reporting Centres

163. When a currency report is made by telephone, where a Telephone Reporting Centre is available to clear the CBSA, complete the currency report form on the person's behalf.

Note: No signature will be required on the form.

Verification

Note: Where a person has made a currency report; an officer does not require reasonable grounds to examine the currency for the purposes of verifying the report.

164. When it is determined that the currency report is to be verified, when possible, count the currency and monetary instrument in the presence of another officer and the client out of the view of the public.
165. When it is determined that currency is to be retained or seized, count it in the presence of another officer.
166. When possible, as the officer counting the currency, take notes indicating the currency denominations and total values.
167. As the observing officer, initial the notes indicating that you witnessed the handling of the currency.
168. As the observing officer, ensure that you take notes regarding the handling of the currency as you may be considered as part of the chain of custody should legal proceedings result from the detention/seizure.
169. Handle currency, which is to be detained or seized, as if it were undeclared or prohibited goods.

Note: Refer to the Enforcement Manual, Part 9 Chapter 3 for the procedures for the handling of physical evidence. When currency is transferred to another entity as

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evidence, follow up with the entity regularly.

170. The safekeeping, handling and control of currency or monetary instruments seized for forensic purposes may be required and conducted by the Police in accordance with Departmental policy and procedures identified in the FAM.

Personal Searches

Note: The personal search process is similar to the *Customs Act*.

171. When conducting a personal search for currency, instead of reading section 98 of the *Customs Act*, read to the person section 15 of the PCMLTFA:

"I have reasonable grounds to suspect that you are carrying non-reported currency or monetary instruments above the prescribed amount on or about your person and I am detaining you for the purposes of a personal search as authorized by section 15 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*."

Retention

172. List the currency and monetary instruments on a K24 and give the importer or exporter the written notice identifying that the currency has been retained.
173. When currency sent by courier or mail is being retained, notify the exporter.
174. If the exporter's address is not known, notify the importer.

Commercial Retention Procedures

175. Detain currency and/or monetary instruments by completing a K24 when you examine a parcel/shipment, which has been declared as currency or monetary instruments, but the appropriate currency report forms are not present or are incomplete.
176. Communicate the retention to the exporter by sending them a copy of the K24.
177. If the address of the exporter is not known, send the receipt to the importer.
178. In either case, ensure a signature is required upon delivery.
179. Place a copy of the K24 with the currency.
180. Complete the physical retention of the currency and/or monetary instruments according to district standards (i.e. safes, vaults).

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BSOs will:

185. Enter seizure information into ICES by selecting the allegation "Non-Report of Currency or Monetary Instruments" from the appropriate drop box:

Note: The commodity drop box has been updated to include:

- a) Currency or Monetary Instruments (for levels 1-3); and
 - b) Suspected Proceeds of Crime (for No Terms of Release).
186. Ensure that all data fields on the K19 are fully completed at the time of seizure
 187. Ensure the accuracy of the data being input
 188. Ensure any data fields, including the narrative report, that may not be completed at the time of seizure are completed **no later than the fourth shift** after the occurrence
 189. Ensure that narrative reports contain the information contained in the guidelines below:
 - a) **When:** The date and time the contravention occurred
 - b) **Who:** The names and addresses of the subjects involved. Surnames should be in capital letters, and full names should be used, i.e., John Edward DOE
 - c) **Where:** In all instances, the form K19 will already identify the Port, however greater detail may be required as to where the enforcement action actually commenced (at primary, in the longroom, at secondary, at a sufferance warehouse, etc.)
 - d) **What:**
 - Information as to whether or not the currency or monetary instruments were reported must be included, as well as the value reported and the actual value discovered subsequent to examination.
 - Officers must include a description of the currency or monetary instruments that became the object of the enforcement action.
 - Where a declaration was made by the subject, a description of the declared goods should also be included.
 - Officers should indicate where declared and undeclared goods were located.
 - Monetary instruments must be described in greater details to ensure reviewers can determine with certainty that they were negotiable
 - e) **How:** The essence of the report will normally consist of the method of operation employed by the importer in committing the violation. The method of concealment,

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the use of false documentation, the method of transport, would all be pertinent facts to include.

f) Why:

- In most cases, the motive for the unlawful importation will be the evasion of revenue and although it may be obvious to mention this as the reason for the contravention, mentioning the actual amount of revenue evaded may assist an adjudicator to understand the justification for the seizure and the terms of release that were offered
- In some cases, non-report of currency and monetary instruments may be justified by the traveller's lack of understanding of the reporting requirements. Regardless, it is still important to include the reason for choosing the particular level of contravention in the narrative report as it may assist an adjudicator in understanding the rationalization for the enforcement action

Note: When dealing with Level 4 seizures:

- Officers must indicate whether the RCMP or local police attended
- Officers must provide written details of the indicators observed justifying that they suspect proceeds of crime
- Should the funds be transferred to the responding police agency, officers must document the steps followed and provide the transferring details including a copy of the Exhibit Control Form (K129) via email to the Programs Branch at the following address: cbcr.dmte@cbsa-asfc.gc.ca

Superintendents will:

190. Ensure that BSOs are afforded sufficient time/opportunity to complete seizure documentation and narrative reports within the established timeframes;
191. Review all seizures within five working days after seizure reports are completed to ensure that no errors have been made, that narrative reports accurately reflect the occurrences, and that all documentation is included in the seizure package;
192. Ensure that review results are documented in the "Seizure review" facility in ICES
193. If directly involved in an enforcement action, the superintendent will complete a narrative report; this is particularly important in the event of a significant seizure or cases that could potentially result in prosecution.

PCMLTFA Seizures (Manual)

Note: A seizure form (K19C) has been developed to include information regarding the PCMLTFA. The K19C will allow the officer to select the appropriate currency

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allegation and commodity. A form K19C-1 Currency Inventory Sheet has also been developed. See Appendix A for examples of both forms.

194. If the K19C is not available, write the following allegation on the seizure documentation (K19S):

"The said currency or monetary instruments are seized under subsection 18(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* because they were not reported contrary to the provisions of subsection 12(1) of that Act."

195. Ensure that subsection 12(1) of the PCMLTFA is also written on the K19S:

"*Proceeds of Crime (Money Laundering) and Terrorist Financing Act* 12(1). Every person or entity referred to in subsection (3) must report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount."

196. Write in the commodity as either:

- a) Currency or Monetary Instruments (for levels 1-3); or
- b) Suspected Proceeds of Crime (for No Terms of Release).

197. Complete the form K19C-1, Currency Inventory Sheet.

198. Fax the completed K19C and the K19C-1 to the Information Sharing Section at (613) 952-4145 for input into ICES.

Establishing Suspected Proceeds of Crime Criteria under the PCMLTFA

Note: Appendix D provides guidance to BSOs on indicators frequently observed during the seizure of currency or monetary instruments that are suspected proceeds of crime or funds for the financing of terrorist activities.

199. Bearing in mind the definitions of proceeds of crime and reasonable grounds, officers must seize as forfeit suspected proceeds of crime or terrorist finances.
200. BSOs must have questioned the traveller in regards to the currency or monetary instruments in order to proceed with the forfeit under the *PCMLTFA*.
201. As the seizing officer, take notes of all reasonable grounds.
202. A CPIC check should be conducted for all suspected proceeds of crime seizure.

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203. Intelligence support procedures established in each region must be followed to determine whether the seized funds are required by the police for use in criminal proceedings;
204. The seizing officer must follow report writing and transferring procedures specific to Level 4 seizures outlined in paragraph 187.
205. When currency or monetary funds are transferred to the police, local management must ensure that the funds are returned to the CBSA to be disposed of according to the procedures set out in the *PCMLTFA*

Establishing Proceeds of Crime Criteria Under the *Criminal Code*

206. Border Services Officers (BSO's) who come across currency or monetary instruments under the reporting threshold or that have been reported under the *PCMLTFA*, but establish reasonable grounds to **believe** that they have proceeds of crime or terrorist finances, are to contact their IPOC unit or their Regional Intelligence office. The funds cannot be seized under the *PCMLTFA*, but could be seized under sections 83.03, 354, or 462.31 of the *Criminal Code*
207. Seizures under the *Criminal Code* often involve a lengthy investigation. The physical seizure of the currency normally follows only after such an investigation. The IPOC unit or Regional Intelligence office will be able to advise the officer on a case-by-case basis.
208. An arrest for laundering proceeds of crime will only occur under the guidance of the IPOC unit or Regional Intelligence office. Should the circumstance warrant, an arrest would be made under the authority of subsection 495(1) of the *Criminal Code*. Only a designated officer at a designated port of entry may make the arrest.

Note: A designated officer may only detain an individual for a short period until custody can be transferred to the police. For more information, please refer to Part 6, Chapter 1(Arrest and Detention) of the Enforcement Manual

209. Currency or monetary instruments seized under the *Criminal Code* will not be placed on customs seizure documentation (K19). The currency or monetary instruments will be recorded on an E352 – Evidence Seizure Receipt. The BSO will write on the E352 that the currency or monetary instruments are being held as "suspected proceeds of crime".
210. The BSO will also complete a K129 Evidence Control Form. The BSO will cross out the reference that the goods are seized under the *Customs Act* and write in "suspected proceeds of crime".
211. When the currency or monetary instruments are transferred to IPOC or the police, the E352 will be cancelled with the K129 number. The E352 may be given to the person

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from whom the currency was seized as a receipt.

212. For detailed processes regarding arrest and seizure under the *Criminal Code*, refer to the policy and procedures for *Criminal Code* offences in the Enforcement Manual, Part 6, Chapter 7.
213. All actions involving "laundering proceeds of crime" will be reported to the Programs Branch by sending an email to cbcr.dmte@cbsa-asfc.gc.ca

Suspending Monetary Instruments

214. In order to protect the value of the seized monetary instruments, suspend the items by immediately notifying the appropriate financial institution by telephone.
215. For travellers' cheques, provide the financial institution with the following information:
 - a) serial numbers;
 - b) quantity of checks by denomination;
 - c) date and place of purchase;
 - d) name of CBSA contact; and
 - e) inform them that the PCMLTFA has been violated.

Note: Major Companies Issuing Travelers Cheques, with 24-Hour service:

American Express 1-800-525-7641
Bank of America 1-415-241-3491
Citicorp 1-800-645-6556
MasterCard 1-800-223-9920
Thomas Cook Bankers 1-800-223-7373 or 212-921-3677
VISA International 1-800-227-6811

216. Do not release the name of the purchaser and/or the person from whom the monetary instruments were seized to the financial institution.
217. Include the time and name of the person notified at the issuing bank or other financial institution in your notes.
218. For all other monetary instruments, contact Programs Branch for guidance at: cbcr.dmte@cbsa-asfc.gc.ca.

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Transferring Procedures

219. The Receipt and Deposit of Public Money Regulations requires that the terms of release of currency seizure and the forfeited currency be deposited promptly to a CBSA bank account to the credit of the Receiver General. They will respectively be recorded to revenue code 8702 (level 1, 2, 3) and 8701 (forfeit, level 4) during the K10 process (Customs Revenue Report).

Note: A summary of deposits into General Revenue, for the Cross Border Currency Reporting program, must be provided on a monthly basis to CBSA Finance.

220. If it is not already notated on K-10 form, write the seizure reference number and file with the seizure reports.
221. CBSA Finance and PWGSC/SPM will proceed with an interdepartmental settlement (IS) to transfer the funds.
222. For forfeited currency other than in Canadian or American dollars, make reasonable efforts to convert the amount in Canadian funds.
223. If a commercial bank charges a fee for counting or converting the currency, pay the fee from the seized amount. In reporting the seized currency, report the net amount, and specify the amount of the fee paid to the commercial bank.
224. Send forfeited monetary instruments to PWGSC/SPM by courier.
225. If the instruments are blank in the "pay to" field, make them out to the Receiver General for Canada.
226. If there are various monetary instruments with different information on each one, contact the Programs Branch by sending an email to cbcr.dmte@cbsa-asfc.gc.ca for details prior to transferring them to PWGSC/SPM.
227. Seized monetary instruments and non-exchangeable currency that could not be deposited by the CBSA and transferred through the IS process for any reason, are to be sent to PWGSC/SPM at:

Public Works and Government Services Canada
Seized Property Management Directorate
12C1, Place du Portage, Phase III
11 Laurier Street
Gatineau, Québec
K1A 0S5

228. Ensure the courier shipment requires a signature on both ends of delivery.

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229. Keep a copy of the courier bill of lading with the seizure records.
230. When a seizure is recorded in ICES, the transfer will be noted in the appropriate disposition field. When the seizure and disposition occur simultaneously, and recorded in ICES, the Currency Coordinator will be considered to have been notified.
231. When a seizure is recorded manually, or when currency/monetary instruments is transferred to PWGSC/SPM or to another entity (Police), the officer will notify the Programs Branch by sending an email to cbcr.dmte@cbsa-asfc.gc.ca referencing:
 - a) date of the seizure/retention;
 - b) date of transfer;
 - c) seizure/reference number;
 - d) amount transferred;
 - e) type of currency;
 - f) method of transfer (i.e. courier); and
 - g) name of the responsible officer.
232. Print and file a copy of the electronic message to the Programs Branch with the physical seizure reports at cbcr.dmte@cbsa-asfc.gc.ca.

Amendments to Reports

233. When a report is to be modified:
 - a) amend the original currency report with the corrected data;
 - b) ensure the person making the report initials the changes;
 - c) note the circumstances of the discrepancy in the comments field of the currency report; and
 - d) ensure you make personal notes regarding the details of the situation.

Note: Acceptance of the reports fulfills the reporting requirements of the individual/courier/transporter. No further documentation will be required.

Note: CBSA officers have the discretionary power to allow persons or entities to amend their currency reports. Where the situation warrants the officer may commence with seizure action or the officer may choose to modify the currency report.

234. If you do not feel a secondary examination or verification is required, release the individual/courier/transporter.

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CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

Currency Report Forms

235. Forms are to be treated as Protected B and must be forwarded in accordance with the Transmittal by Mail of Sensitive Information Checklist.

236. Forward all reports received to the Programs Branch through inter-office mail in a reusable envelope or by first class mail using a single gum-sealed envelope with no security marking where interoffice mail is not available. Note: The data will be captured and forwarded by the CBSA to FINTRAC.

Note: Reports for sums under the legislative requirement of \$10,000 CAD or its equivalent in foreign currency are not to be forwarded.

237. Batch reports weekly and forward them via inter-office mail to:

CBSA/FINTRAC Data Entry
Strategic Planning and Financial Management Unit
Program Performance and Reporting Division
17th Floor Sir Richard Scott Building
191 Laurier Avenue West
Ottawa, ON K1A 0L8

REFERENCES

The Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Cross-Border Currency and Monetary Instruments Reporting Regulations

Customs Act

Immigration and Refugee Protection Act

Criminal Code of Canada

Comptrollership Manual, Finance Volume

Part 2 Chapter 2

**CROSS-BORDER CURRENCY AND MONETARY
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**CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS
REPORTING POLICY AND PROCEDURES**

Appendix A

SEIZURE RECEIPT CURRENCY AND MONETARY INSTRUMENTS (K19C)

AND

CURRENCY INVENTORY SHEET (K19C-1)

CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

Canada Border Services Agency
Agence des services frontaliers du Canada

PROTECTED / PROTÉGÉ B
When completed / une fois rempli

**SEIZURE RECEIPT
CURRENCY AND
MONETARY INSTRUMENTS**

Restore - Restaurer **Help** **Aide**

**SAISIE DOUANIÈRE
ESPÈCES ET EFFETS**

Seizure no. - N° de saisie

Last name, first name, middle names - Nom de famille, prénoms

Address (street, city, province and postal code) - Adresse (rue, ville, province et code postal)

Date: YYYY - AAAA MM DD - JJ

Service mode - Type de signification

In person / En personne ☐ Mail / Par la poste ☐

Date: YYYY - AAAA MM DD - JJ

CBSA office - Bureau de l'ASFC

The said currency or monetary instruments are seized under subsection 18(1) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, because they were not reported contrary to the provisions of subsection 12(1) of that Act.

Lesdits effets et espèces sont saisis en vertu du paragraphe 18(1) de la Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes, parce qu'ils n'ont pas été déclarés conformément aux dispositions du paragraphe 12(1) de la loi.

STATEMENT OF CURRENCY and/or MONETARY INSTRUMENTS SEIZED		COMPTÉ RENDU DES ESPÈCES et/ou DES EFFETS SAISIS	
	Country of issue / Pays d'origine	Amount - Montant	CAD rate for conversion / Taux de conversion CAN
Currency and coins / Espèces et monnaie			\$
Other monetary instruments / Autres effets			\$
	Totals / Totaux		\$

PENALTY INFORMATION

☐ Level 1 / Niveau 1 \$250 ☐ Level 2 / Niveau 2 \$2500 ☐ Level 3 / Niveau 3 \$4500 ☐ Retained as forfeit / Aucune condition de mainlevée

Amounts received - Montants reçus Total Receipt no. - N° du reçu

INFORMATION CONCERNANT LA PÉNALITÉ

☐ Level 1 / Niveau 1 \$250 ☐ Level 2 / Niveau 2 \$2500 ☐ Level 3 / Niveau 3 \$4500 ☐ Retained as forfeit / Aucune condition de mainlevée

Amounts received - Montants reçus Total Receipt no. - N° du reçu

RIGHT OF APPEAL

Right to request a Minister's decision

If you, or the lawful owner of the currency or monetary instruments, wish to file an objection to this enforcement action and request a decision of the Minister of Public Safety, you must give notice in writing to the officer who took the enforcement action or to an officer at the CBSA office closest to the place where the enforcement action was taken. This request must be filed within 90 days after the date the enforcement action was taken.

A person who requests a decision of the Minister may, within 90 days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant.

Third party claims

If you are aware of any persons or entity, with the exception of the above named, that may have an interest as owner or, in Quebec a right as owner or trustee of the currency or monetary instruments seized, please advise them to apply by notice in writing to the Court within 90 days after the seizure.

DROIT D'APPEL

Droit de demander au ministre de rendre une décision

Si vous, ou le propriétaire légitime des espèces ou des effets, souhaitez déposer une opposition à cette mesure d'exécution et demander au ministre de la Sécurité publique de rendre une décision, vous devez donner un avis par écrit à l'agent qui a appliqué la mesure d'exécution à un agent au bureau de l'ASFC le plus près de l'endroit où la mesure d'exécution a été prise.

La demande doit être déposée dans les 90 jours après la date où la mesure d'exécution a été prise. Une personne qui demande au ministre de rendre une décision peut, dans les 90 jours après avoir été avisée de la décision, appeler d'une décision par voie d'une action devant la Cour fédérale où l'individu est le demandeur et le ministre est le défendeur.

Réclamations des tiers

Si vous connaissez toute personne ou entité, à l'exception des noms susmentionnés, qui pourrait avoir un intérêt en qualité de propriétaire ou, au Québec en qualité de propriétaire ou de fiduciaire des espèces ou des effets saisis, veuillez les aviser par avis de requête à la Cour dans les 90 jours après la saisie.

CBSA office (Name, address and telephone No.) - Bureau de l'ASFC (Nom, adresse et n° de téléphone)

Seizing officer - Agent de saisie

Narrative report - Rapport circonstancié

Signature of seizing officer - Signature de l'agent de saisie

K19C (12)

CLIENT COPY - COPIE CLIENT

Part 2 Chapter 2

CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES



Canada Border
Services Agency
Agence des services
frontaliers du Canada

CROSS-BORDER CURRENCY REPORTING PROGRAM - CURRENCY INVENTORY SHEET PROGRAMME DE LA DÉCLARATION DES MOUVEMENTS TRANSFRONTALIERS DES ESPÈCES - FEUILLE D'INVENTAIRE DES ESPÈCES

Seizure Number - Numéro de saisie	Date	Time - Heure	Page
Port - Bureau	Officers - Agents		

Canadian - Canadien			U.S. - Américain		
Bills - Billets	Bill count - Nombre de billets	Total Value - Valeur totale	Bills - Billets	Bill count - Nombre de billets	Total Value - Valeur totale
5	X		1	X	
10	X		2	X	
20	X		5	X	
50	X		10	X	
100	X		20	X	
1000	X		50	X	
Other - Autre	X		100	X	
Other - Autre	X		1000	X	
		Change Monnaie			Change Monnaie
		Total			Total
			Exchange Rate - Taux de change		
			Total CAD		

Other Currency - Autres devises			Other Currency - Autres devises		
Specify - Spécifiez			Specify - Spécifiez		
Bills - Billets	Bill count - Nombre de billets	Total Value - Valeur totale	Bills - Billets	Bill count - Nombre de billets	Total Value - Valeur totale
	X			X	
	X			X	
	X			X	
	X			X	
	X			X	
		Change Monnaie			Change Monnaie
		Total			Total
			Exchange Rate - Taux de change		
			Total CAD		

Monetary Instrument - Effets					
Type of Instrument - Type d'effet	Currency - Devise	Amount - Nombre	Value - Valeur	Exchange Rate - Taux de change	Total CAD
		X \$			
		X \$			
		X \$			
				Total CAD	

K19C-1 (08)

BSF494



Part 2 Chapter 2

**CROSS-BORDER CURRENCY AND MONETARY
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**CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS
REPORTING POLICY AND PROCEDURES**

Appendix B

**Confirmation of the Return of Seized Currency and/or Monetary Instruments Upon
Payment of Penalty**

Protected once completed

Part 2 Chapter 2

**CROSS-BORDER CURRENCY AND MONETARY
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**CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING
POLICY AND PROCEDURES**

Appendix C

CURRENCY CHECKLISTS

EN Part 2 Chapter 2 Cross-Border Currency and Monetary Instruments Reporting

Part 2 Chapter 2

CROSS-BORDER CURRENCY AND MONETARY
 INSTRUMENTS REPORTING POLICY AND PROCEDURES

APPENDIX C

Cross-Border Currency Reporting (CBCR) Program
 Seizure Checklist

For Currency or Monetary Instruments

When currency or monetary instruments are released on payment of penalty (level 1, 2, or 3), the following checklist is to be completed and included on file:

Copy of the K19 or K19C to be included on file. K19/K19C#: _____	Yes	No
Superintendent notification as per Enforcement Manual Part 2, Chapter 2, Par. 126(c). Superintendent Name: _____ Badge #: _____	Yes	No
Copy of the Confirmation of the Return of Seized Currency and/or Monetary Instruments Upon Payment of Penalty letter to be completed and signed by the seizing officer or supervisor as well as the subject, and included on file.	Yes	No
Copy of the K21 generated upon payment of penalty is included on file. K21#: _____	Yes	No
When the penalty amount collected is deposited into general revenue (under financial coding number 8702), a copy of the K10 is included on file as per Enforcement Manual Part 2, Chapter 2, Par.203. K10#: _____	Yes	No

Superintendent Signature Badge #

Part 2 Chapter 2

CROSS-BORDER CURRENCY AND MONETARY
INSTRUMENTS REPORTING POLICY AND PROCEDURES

EN Part 2 Chapter 2 Cross-Border Currency and Monetary Instruments Reporting

APPENDIX C

**Cross-Border Currency Reporting (CBCR) Program Seizure Checklist
For Suspected Proceeds of Crime**

When currency or monetary instruments are seized as suspected proceeds of crime (level 4), the following checklist is to be completed and included on file:

Copy of the K19 or K19C to be included on file. K19/K19C#: _____	Yes	No
Superintendent notification as per Enforcement Manual Part 2, Chapter 2, Par. 126(c). Superintendent Name: _____ Badge #: _____	Yes	No
Seized currency / monetary instruments counted in the presence of a second officer, as per EN Manual Part 2, Chapter 2, par. 159. Officer Name: _____ Badge #: _____	Yes	No
Notify an RIO, as per EN Manual Part 2, Chapter 2, par. 188. RIO Name: _____ Badge #: _____	Yes	No
If the currency and/or monetary instruments are temporarily transferred to the RCMP or a police force, a copy of the K129 is included on file upon transfer. K129#: _____ Please check the appropriate box when the currency and/or monetary instruments is returned by the RCMP or police force	Release	Return
	Yes No N/A	Yes No N/A

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**CROSS-BORDER CURRENCY AND MONETARY
INSTRUMENTS REPORTING POLICY AND PROCEDURES**

<p>If the seizure contains monetary instruments, the financial institution needs to be contacted in order to place a hold on them and preserve their value, as per EN Manual Part 2, Chapter 2, par. 197. Please check the appropriate box, if you have contacted the financial institution.</p>	<p>Yes</p>	<p>No</p>
<p>If the currency and/or monetary instruments are to be deposited into general revenue (under financial coding number 8701), a copy of the K10 is included on file as per Enforcement Manual Part 2, Chapter 2, Par.203. K10#: _____</p>	<p>Yes</p>	<p>No</p>
<p>If the currency and/or monetary instruments are to be forwarded directly to PWGSC/SPM by the port, the courier bill of lading is included on file, as per EN Manual Part 2, Chapter 2, par. 212. Ref#: _____</p>	<p>Yes</p>	<p>No</p>
<p>Notify the Cross-Border Currency Reporting Program coordinator by email, as per EN Manual Part 2, Chapter 2, par. 214.</p>	<p>Yes</p>	<p>No</p>

Superintendent Signature Badge #

Part 2 Chapter 2

**CROSS-BORDER CURRENCY AND MONETARY
INSTRUMENTS REPORTING POLICY AND PROCEDURES**

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**CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING
POLICY AND PROCEDURES**

**Appendix D
Suspected Proceeds of Crime Indicator Guidelines**

Part 3

SELECTION

Chapter 9

PROCESSING INDIVIDUALS WHO TURN AROUND AT LAND PORTS OF ENTRY

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct primary questioning in accordance with the provisions set out in the *Customs Act*, *Proceeds of Crime (Money Laundering) Terrorist Financing Act* (PCMLTFA) and the *Immigration and Refugee Protection Act* (IRPA), and in recognition of the limitations of those authorities respecting individuals who have not left Canada.

AUTHORITIES

Customs Act

Obligation to present, report and answer questions

2. Section 7.1 – States that any information provided to an officer in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Imports Measures Act* or under any other Act of Parliament that prohibits, controls, or regulates the importation or exportation of goods must be true, accurate, and complete.
3. Section 11 – Obliges every person arriving in Canada to enter only at a customs office designated for that purpose that is open for business and present themselves to a border services officer (BSO) and to answer truthfully any questions asked by that officer in the performance of his or her duties under the *Customs Act* or any other Act of Parliament.
4. Section 12 – Requires persons and importers to make a report of all goods they are importing.
5. Section 13 – Obliges persons and importers to make a truthful declaration, answer questions truthfully, and present their goods for examination.
6. Section 32(1) – Requires importers to account for their goods and pay the applicable duties before they are released.

Examination of goods

7. Paragraphs 99(1)(a) - Authorizes officers to examine any goods (including conveyances) that have been imported anytime up to the time of release.
8. Paragraph 99(1)(e) – Authorizes officers to examine goods (including conveyances) where the officer suspects on reasonable grounds that the *Customs Act* or any Act of Parliament administered or enforced by the officer have been or might be contravened in respect of the goods.

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9. Paragraph 99(1)(f) – Authorizes officers to stop, board, and search any conveyance, examine any goods carried thereon, and direct that the conveyance be moved to a CBSA office or other suitable location for any such search and examination where the officer suspects on reasonable grounds that the *Customs Act* or any Act of Parliament administered or enforced by the officer have been or might be contravened in respect of the conveyance or the goods.
10. Examinations conducted under the authority of paragraphs 99(1)(a),(b) and (c), which do not mention reasonable grounds, may therefore be conducted anytime up to the time of release of such baggage, goods or conveyances that are brought into Canada or are reported for export from Canada.
11. Section 99.1 – Authorizes officers to stop a person whom the officer has reasonable grounds to suspect has entered Canada without presenting himself or herself in accordance with subsection 11(1) within a reasonable time after the person entered Canada and question that person and examine their imported goods.

Immigration and Refugee Protection Act

12. Subsection 15(1) – Authorizes officers to proceed with an examination if a person makes an application to the officer in accordance with this Act or if an application is made under subsection 11(1.01).
13. Subsection 15(3) – Authorizes officers, if required, to board and inspect any means of transportation bringing persons to Canada, examine any person carried by that means of transportation and any record or document respecting that person, seize and remove the record or document to obtain copies or extracts and hold the means of transportation until the inspection and examination are completed.
14. Subsection 16(1) – Requires every person who makes an application to answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.
15. Subsection 16(3) – Authorizes officers, if required, to obtain from a permanent resident or a foreign national who is arrested, detained, subject to an examination or subject to a removal order, any evidence — photographic, fingerprint or otherwise — that may be used to establish their identity or compliance with this Act.
16. Subsection 18(1) – Requires every person seeking to enter Canada to appear for an examination to determine whether that person has a right to enter Canada or is or may become authorized to enter and remain in Canada.

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17. Subsection 55(2) – Authorizes officers to arrest and detain without a warrant, a foreign national, other than a protected person, who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister, or if the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

18. Part 2 – Provides the CBSA the authority to administer and enforce Part 2 of the Act.
19. Subsection 12(1) – Provides the obligation for every person or entity referred to in subsection (3) to report to an officer, the cross border movement of currency or monetary instruments of a value equal to or greater than CAN\$10,000.
20. Subsection 12(4) – Provides the obligation to answer truthfully any questions asked by the officer in the performance of the officer's duties under Part 2 and to present currency or monetary instruments for examination.
21. Subsection 16(1) – Authorizes officers to stop, board and search any conveyance, examine anything in or on it and open or cause to be opened any package or container in or on it, in order to determine that there are currency or monetary instruments of a value equal to or greater than CAN \$10,000 for the purpose of subsection 12(1) and direct the conveyance to be moved to a customs office or other suitable place for the search, examination or opening.
22. Subsection 16(2) – Authorizes officers to search baggage, examine anything in it and open or cause to be opened any package or container in it, in order to determine that it contains currency or monetary instruments that are of a value equal to or greater than CAN\$10,000 for the purpose of subsection 12(1) and direct that baggage be moved to a customs office or other suitable place for the search, examination or opening.
23. Subsection 17(1) – Authorizes officers to examine any mail that is being imported or exported and open or cause to be opened any such mail that the officer suspects on reasonable grounds contains currency or monetary instruments of a value equal to or greater than CAN\$10,000 for the purpose of subsection 12(1).

Cross-Border Currency and Monetary Instrument Reporting Regulations

24. Establishes the threshold amount for currency reporting at CAN \$10,000 or its equivalent after conversion, the general manner of reporting, retention, the prescribed amount of penalties, and administrative details.

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Duty Free Shop Regulations

25. Subsection 18(1) – States that duty free shop goods may be transferred only by sale to persons who are about to leave Canada.

Immigration and Refugee Protection Regulations

26. Section 28 – States that for the purposes of subsection 15(1) of the Act, a person makes an application in accordance with the Act by
- a) submitting an application in writing;
 - b) seeking to enter Canada;
 - c) seeking to transit through Canada as provided in section 35; or
 - d) making a claim for refugee protection.

The Canadian Charter of Rights and Freedoms

27. Section 8 – States everyone has the right to be secure against unreasonable search or seizure.
28. Section 9 – States everyone has the right not to be arbitrarily detained or imprisoned.

PURPOSE AND SCOPE

27. The purpose of this policy is to provide guidelines to Border Services Officers (BSOs) on:
- a) the questioning of persons who may not have left Canada regarding admissibility and goods; and
 - b) selecting and referring persons, goods, and conveyances for secondary examination, who may not have left Canada.

BACKGROUND

28. The physical layout of some ports of entry allows traffic bound for the United States (US) to turn around in between the CBSA office and the US Customs and Border Protection (USCBP) office, entering the primary inspection lanes on the Canadian side. In some cases this traffic will have physically left Canada, in other cases not. BSOs need to be aware of how this impacts their authorities under the *Customs Act*, the PCMLTFA and IRPA.

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POLICY GUIDELINES

Person and goods have physically left Canada but were not processed by USCBP

29. If an individual has physically left the territory of Canada, the legal authorities under the *Customs Act*, PCMLTFA and IRPA apply as they would to a normal situation where a person and/or goods enter Canada after having been processed by USCBP.
30. Officers should ensure that they exercise all of the above authorities judiciously with respect to persons arriving in Canada. Such individuals may not have intended to leave Canada and therefore may not be in possession of required travel documents, or be confused as to why they have to answer questions.
31. In these instances, officers should complete primary as per regular processing procedures.

It is unclear whether or not the individual left Canada

32. Some individuals may not be aware of the physical location of the international border or the officer may not have noticed where, in terms of the physical border, the person turned around in between the CBSA office and USCBP.
33. In these instances, the legal authorities under the *Customs Act*, PCMLTFA and IRPA apply as they would to a normal situation where a person and/or goods enter Canada.
34. In these instances, officers should complete primary as per regular processing procedures.

Person states they have not left Canada but officer has reasonable grounds to suspect the person is not being truthful

35. This is different from the previous scenario in that there is an attempt by the individual to misrepresent their departure from Canada.
36. If this scenario occurs, the officer should take steps to verify the individual's claim. This may include requesting identification from the individual and asking questions.
37. The officer should make use of all available information (e.g. video surveillance footage, other staff who may have observed the individual or conveyance, etc.) to determine whether the individual left Canada.
38. Officers must record their grounds in their notebook and must be prepared to articulate these grounds if required.

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48.

49. Following this brief interaction, the person should be allowed to proceed immediately, unless the officer suspects a contravention under 99(1)(e) and 99(1)(f) of the *Customs Act* or a criminal offence is identified prior to or during this interaction.
50. Neither the PCMLTFA nor IRPA have a section equivalent to subsections 99(1)(e) and 99(1)(f) of the *Customs Act*. As such, officers can only refer a traveller to secondary under the PCMLTFA or IRPA if the individual has departed/is arriving in Canada. As this is not the case in scenarios where the officer is completely satisfied that the individual and goods are not arriving in Canada, no examination under the PCMLTFA or IRPA is authorized.
51. Under subsection 55(2) of IRPA, officers may arrest and detain foreign nationals, other than protected persons, if the officer has reasonable grounds to **believe** is inadmissible and a danger to the public or unlikely to appear for an examination, admissibility hearing, removal from Canada, or at a proceeding that could lead to a removal order.
52. In all instances of a referral, officers will need to notate and properly articulate the grounds which led to the referral.

Enforcement flags (lookouts, alerts, targets, etc.) displaying in IPIL when an individual turns around without physically leaving Canada

53. This section applies only to scenarios in which the officer is completely satisfied that an individual has turned around without physically leaving Canada.
54. As there is not sufficient information available at primary for officers to determine the reason for the enforcement flag, nor to confirm the traveller as the subject of the enforcement flag, an enforcement flag does not automatically constitute reasonable grounds to suspect or believe a contravention has occurred under one of the acts administered by the CBSA.
- 55.

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56. Officers must record all relevant information in their notebooks, including the time of the occurrence, licence plate number of the domestic vehicle and the enforcement flag activity number.
- 57.
- 58.
59. Should additional indicators be present which lead the officer to **suspect** a contravention under 99(1)(e) and 99(1)(f) of the *Customs Act* or a criminal offence is identified prior to or during this interaction, officers may refer the traveller as described in the "Individual turns around without physically leaving Canada" section directly above.
60. Should additional indicators be present which lead the officer to **believe** on reasonable grounds that a foreign national, other than a protected person, is inadmissible and a danger to the public or unlikely to appear for an examination, admissibility hearing, removal from Canada, or at a proceeding that could lead to a removal order, the officer may arrest and detain the individual under subsection 55(2) of IRPA. In the case of an IRPA arrest and detention, officers must complete all the required paperwork and document the case in GCMS.
61. In all instances of a referral, officers must record their grounds in their notebook and must be prepared to articulate these grounds if required.
62. Some enforcement flags may have an associated officer safety caution. As with a regular processing situation, the existence of an officer safety caution is an indicator which must be considered in the overall risk assessment when considering any potential use of force options when processing the traveller.
63. The overall risk assessment of any potential threat from a traveller, in addition to consideration of the officer safety caution, would include situational factors, officer's perception, and exhibited behaviour by the traveller as comprehended in the Incident Management Intervention Model.
64. Should officers form the reasonable grounds to suspect or believe it is necessary to draw or use their defensive equipment, they may do so in accordance with Agency policy, directives, standard operating procedures, and training.
65. As always, should force be used to manage an encounter, CBSA officers are required to complete a BSF586 Use of Force Incident Report, ensuring they clearly articulate the reasons for the need to apply force.

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Officer powers authorities when an individual turns around without physically leaving Canada

66. Designated officers who during the normal course of their duties (including determining the admissibility of individuals who present themselves at primary) encounter *Criminal Code* offences, have the authority under section 163.5 of the *Customs Act* to deal with subjects involved with a *Criminal Code* violation, process them as per standard operating procedures and refer them to the police agency of jurisdiction.
67. These authorities are not affected by designated officers processing individuals who they determine have not left Canada.
68. As always, designated officers will not use their *Customs Act* authorities for the sole purpose of looking for evidence of *Criminal Code* offences under the *Criminal Code* or any other federal statute.
69. Designated officers will enforce the provisions of the *Criminal Code* or other federal statutes and will refer offenders to the police agency of jurisdiction for further processing and the laying of charges, should it be warranted.

Duty Free Shop Goods

70. Goods (whether domestically produced or imported) purchased at duty free shops (DFSs) are for immediate exportation and are not considered imported into the Canadian economy. Rather, they are held in-bond in the DFS where they are not formally accounted for and duties and taxes are not collected on them.
71. If a traveller has exited Canada with DFS goods, even if only momentarily, the goods are considered to be imported upon their return to Canada. In this case the DFS goods become subject to section 32(1) of the *Customs Act* and the CBSA has the authority to collect any duties and taxes owing.
72. If a person does not exit Canada and declares DFS goods that have not been exported, this constitutes a contravention of section 18(1) of the *Duty Free Shop Regulations* (DFSR), which states that DFS goods may only be sold to people leaving Canada.
73. The fact that DFS goods are entering the Canadian market without first being exported is, in and of itself, a contravention of section 18(1) of the DFSR. There does not have to be any onus on the part of the DFS or the traveller to generate this contravention.

74. Because the DFSR have been contravened, CBSA officers have the authority to examine the goods and conveyance under paragraphs 99(1)(e) and 99(1)(f) of the *Customs Act*.
75. Although technically a contravention of section 18(1) of the DFSR and subject to seizure, in such a circumstance, where the traveller declared the DFS goods, the individual should be given the choice of:
- a) paying the duties and taxes owing;
 - b) exporting the DFS goods;
 - c) returning the goods to the DFS; or
 - d) abandoning the DFS goods to the Crown on a form BSF241.
76. Should a traveller provide inaccurate information relating to the DFS goods (e.g. denying they have purchased DFS goods when asked), the goods may be seized under section 110(1) of the *Customs Act*, as a contravention of section 7.1 of the *Customs Act*.
77. The Assessment and Licensing Unit should be notified of any recurring issues of travellers failing to export goods purchased at DFS since it indicates potential non-compliance with DFS Program requirements. The Assessment and Licensing Unit generic email address is:

ROLES AND RESPONSIBILITIES

Border Services Officers

78. Border services officers are responsible for adhering to this policy and procedures.

CBSA Port of Entry Managers and Superintendents

79. CBSA port of entry managers and superintendents are responsible for:
- a) ensuring that this policy and procedures are adhered to at their port; and
 - b) providing direction and support to BSOs.

REFERENCES

Customs Act

Immigration and Refugee Protection Act

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Duty Free Shop Regulations

Immigration and Refugee Protection Regulations

The Canadian Charter of Rights and Freedoms

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CUSTOMS ENFORCEMENT MANUAL

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND CONVEYANCES

Chapter 3

***CRIMINAL CODE* – SEIZURE OF EVIDENCE AND GOODS**

15/10/18

EN Part 5 Chapter 3

Criminal Code – Seizure of Evidence and Goods

7. Provisions that prohibit, control, and regulate goods are called *in rem* provisions. CBSA officers can only detain goods under authority of section 101 of the *Customs Act* when the statutory provision is *in rem*. Officers are unable to detain goods under the *Customs Act* in those cases where the statute only creates an *in personam* offence.
8. When there is evidence of a criminal offence under the *Customs Act*, officers may seize evidence under section 110(3). Officers should consult with Investigations before taking seizure action.
9. When goods are in compliance with the *Customs Act* but have been obtained, used, or are evidence of the commission of an offence under any other act of Parliament, CBSA officers have the authority to seize goods under subsection 489(2) of the *Criminal Code* where the statutory provision is *in personam*. Such as:
 - a) importing goods obtained by crime (*Criminal Code* s. 357), (e.g. stolen property);
 - b) importing instruments for forging or falsifying credit cards (*Criminal Code*, subsection 342.01);
 - c) importing counterfeit money (*Criminal Code*, section. 450);
 - d) importing gaming machines (*Criminal Code*, section 202);
 - e) forging a trade-mark with intent to deceive (*Criminal Code*, section 407).

POLICY GUIDELINES

10. The primary responsibility of all CBSA officers remains the enforcement and application of the *Customs Act* and its regulations as well as the laws of other government departments (OGDs) for which it has responsibility.
11. The *Customs Act* will take precedent over the *Criminal Code* in matters dealing with *in personam* offences concerning the importation, exportation, or possession of imported/exported goods.
12. The completion of customs processes may be suspended, if action under the *Criminal Code* is considered.

Note: For example, the goods are in compliance with the *Customs Act*, but duties and taxes have not yet been collected.

13. Travellers' goods that are not in compliance with the *Customs Act* may be seized under the *Customs Act*.

14. Commercial goods that are not in compliance with the *Customs Act* should be dealt with in accordance with AMPS policy.

Note: Refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and Administrative Monetary Penalties Policy and Procedures.

15. Goods seized under the *Customs Act* that are to be used as evidence of an offence under another act must remain under customs documentary control at all times.

16. Officers will refer, with the exception of drugs (including cannabis), all incidents of smuggling or fraud under the *Customs Act* to Investigations through the Regional Intelligence Officer (RIO) unless otherwise indicated in a local standard operating procedure (SOP).

Note: Refer to Part 9, Chapter 1, Customs Prosecution Policy, and Part 9, Chapter 2, Customs Prosecution Procedures.

17. Action under subsection 489(2) of the *Criminal Code* will normally be taken when there is clear and concise information received from the RCMP and/or OGD, which states the nature of the offence, provides sufficient information to identify the shipment and the RCMP and/or OGD is willing to lay a charge in relation to the act.

Note: This policy does not apply to goods that are evidence of an offence for which an individual has been arrested. In these cases, the evidence obtained is incidental to the arrest.

18. Goods that are clearly in contravention of OGD legislation may be seized under subsection 489(2) of the *Criminal Code* when there is no prior intelligence information if, prior to actual seizure, a RIO consults with the RCMP and they are willing to take possession of the goods if a seizure is made, and are willing to lay a charge in relation to the contravention.

Note: Based on information received from the RCMP, the final decision to seize will be made by the customs officer.

19. Officers will advise the importer/owner when goods are seized under subsection 489(2) of the *Criminal Code* and inform the importer/owner of the goods being seized, the legislative authority contravened and the allegation.

20. The RCMP and/or OGD will be responsible for the storage and handling of all goods seized under subsection 489(2) of the *Criminal Code*.

21. In cases where the RCMP or other police force cannot take immediate custody of seized goods, they will be responsible for any storage costs incurred by the CBSA.
22. The RCMP and/or OGD will be responsible for reporting the seizure to the court in accordance with subsection 489.1 of the *Criminal Code*.
23. Goods seized under subsection 489(2) of the *Criminal Code* will remain subject to customs duties and controls and must be returned to customs for accounting and payment of applicable duties and taxes unless the court orders them forfeit and condemned for destruction or to be exported.

Working with Other Police Forces

24. In agreement with the RCMP, the CBSA may enter into arrangements with provincial or municipal police forces to take custody of goods seized under subsection 489(2) of the *Criminal Code*.

Note: This only applies to offences of the *Criminal Code* and not to offences of any other federal or provincial statute.

Note: This does not apply to joint forces operations (JFO's) that are conducted between the CBSA and other police forces.

25. In the absence of local arrangements, all subsection 489(2) of the *Criminal Code* matters will be referred to the RCMP through the appropriate RIO.
26. Referrals to the police or to OGD's are considered disclosures of customs information pursuant to section 107 of the *Customs Act*. These disclosures must be made in accordance with the procedures described in the Policy on the Disclosure of Customs Information: Section 107 of the *Customs Act*.

Intelligence Based Seizures

27. For subsection 489(2) of the *Criminal Code* intelligence-based seizures to be carried out, intelligence information must have been received by an RIO from the RCMP or an OGD.
28. Officers will ensure that the appropriate RIO is informed immediately when information is received directly by district or port staff from the RCMP or an OGD.

Note: The RIO will then contact the involved RCMP or OGD office for verification and further information.

EN Part 5 Chapter 3

Criminal Code – Seizure of Evidence and Goods

29. Officers will not take action on a subsection 489(2) of the *Criminal Code* occurrence prior to making contact with the appropriate RIO.
30. Information received from the RCMP or an OGD must include:
 - a) the section of the federal statute being contravened;
 - b) a clear description of the goods;
 - c) the specific justification for seizing the goods; and
 - d) a clear indication from the RCMP that they will charge the individual.
31. When an RIO receives information directly from an OGD, they must contact the RCMP prior to taking any action to ensure they are aware of the situation and will accept responsibility for the goods once they are seized.
32. Although intelligence information will be provided by the RCMP or an OGD, customs officers will only seize goods under authority of subsection 489(2) of the *Criminal Code* when they **believe on reasonable grounds** the goods have been obtained by, or used in, the commission of a criminal offence or will afford evidence of a criminal offence that has been committed or is being committed. Officers will document their reasonable grounds in their notebook.
33. Although based on information received by the RCMP, the final decision to seize will be that of the customs officer.
34. CBSA officers will not delay the release of shipments and/or conduct examinations for the sole purpose of determining whether goods are evidence of a criminal offence. A lookout on a particular commodity, which may include guidelines in the form of indicators, provided by the RCMP, an OGD or other police service, is to be considered for informational purposes only.
35. Officers may conduct examinations at their own discretion and subject to operational requirements when the RCMP, OGD, or other police force have given specific direction as to a quantity they are interested in for prosecution purposes and have expressed a willingness to take action if such goods are identified, or they have provided other specific information such as the name of a particular offending importer which allows shipments to be specifically targeted.

ROLES AND RESPONSIBILITIES

Border Services Officers

36. Border Services Officers are responsible for:

- a) ensuring these policy and procedure guidelines are followed;
- b) contacting the regional intelligence officer (RIO) before seizing goods under the authority of subsection 489(2) of the *Criminal Code*; and
- c) ensuring goods seized under subsection 489(2) of the *Criminal Code* are documented and turned over to the RCMP and when necessary, stored safely.

Managers and Superintendents

37. Managers and superintendents are responsible for:

- a) ensuring compliance with these policy and procedure guidelines; and
- b) ensuring the required communication takes place between the district/port office and the RIO.

Regional Intelligence Officers

38. Regional intelligence officers are responsible for:

- a) ensuring policy and procedure guidelines are followed;
- b) contacting Investigations;
- c) ensuring that lookouts are issued, maintained, and removed, as required; and
- d) working with Investigations, local police or RCMP, OGDs, and other enforcement agencies to ensure cooperation with the terms of this policy including the eventual return of the goods to customs unless they are otherwise disposed of in an acceptable manner.

Investigations

39. Criminal Investigators are responsible for:
- a) acknowledging receipt of all referrals received;
 - b) conducting investigations and considering prosecutions related to offences under the *Customs Act*, *Customs Tariff Act*, *Export and Import Permits Act*, *Cultural Properties Act*, and other acts that control the import and export of goods;
 - c) working with RIO's, the RCMP and other enforcement agencies to identify opportunities for joint investigations/prosecutions on a case-by-case basis, whether the goods were seized under the *Customs Act* or *Criminal Code*;
 - d) consulting with the Department of Justice to determine whether a prosecution is warranted; and
 - e) advising the referring agency of the status of the investigation.

Enforcement and Intelligence Operations

40. Enforcement and Intelligence Operations is responsible for:
- a) monitoring compliance with this policy and procedures;
 - b) receiving feedback and recommendations from the field and addressing concerns; and
 - c) developing and maintaining appropriate policy as required.

PROCEDURES

- 41. Take control of the goods and document all actions you have taken to maintain the continuity of the evidence.
- 42. Follow procedures as outlined in Part 6, Chapter 7, Criminal Code Offences for processing persons suspected of being in possession of property obtained by crime. The Exhibit Control Form (K129), used for transferring the goods to the appropriate police force, is attached as Appendix A. Also the Evidence Seizure Receipt (E352), used to identify seized goods, is attached as appendix B.

43. Normally, the RCMP and/or OGD is responsible for reporting the seizure to the court in accordance with subsection 489(1) of the *Criminal Code*.

Note: In British Columbia the CBSA reports the seizure to the court.

44. When the criminal prosecution has been completed, acquit the entry by:
- a) the normal accounting process;
 - b) a written notice from the RCMP that the goods have been destroyed;
 - c) a written notice from the RCMP that the goods have been exported; or
 - d) a notice that the courts have ordered the goods forfeit.

REFERENCES

45. *Customs Act*
Customs Tariff
Criminal Code of Canada
Trademarks Act
ICES User Reference Manual

Part 5

**ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND
CONVEYANCES**

Chapter 3

***CRIMINAL CODE* – SEIZURE OF EVIDENCE AND GOODS**

Appendix A

EXHIBIT CONTROL FORM (K129)

15/10/18

EN Part 5 Chapter 3

Criminal Code – Seizure of Evidence and Goods

APPENDIX A



EXHIBIT CONTROL CONTRÔLE DES PIÈCES À CONVICTION

Reference no. – N° de référence
Other reference no. – Autre n° de référence
Customs office – Bureau de douane
Date

Re – Objet:

I Je	came into possession of the following described goods on suis entré en possession des objets décrits ci-après le
at à	by en

EXHIBITS LISTED BELOW ARE TO BE GIVEN ITEM NUMBERS IN CONSECUTIVE ORDER LES PIÈCES ÉNUMÉRÉES CI-DESSOUS RECEVRONT UN N° EN ORDRE CONSÉCUTIF	
Item no. N° de pièce	Description

CERTIFIED CORRECT – CERTIFIÉ CONFORME			
Customs Officer – Agent des douanes	Date	Superintendent or person in charge of exhibits Surintendant ou responsable des pièces à conviction	Date

CERTIFIED CORRECT / CERTIFIÉ CONFORME				
Item no. N° de pièce	Recipient (signature) – Destinataire (signature)	Agency – Organisme	Date	Witness (signature) – Témoin (signature)

K129 (00)

Canada

15/10/18

1

000093

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND CONVEYANCES

Chapter 3

CRIMINAL CODE – SEIZURE OF EVIDENCE AND GOODS

Appendix B

EVIDENCE SEIZURE RECEIPT (E352)

15/10/18

EN Part 5 Chapter 3

Criminal Code – Seizure of Evidence and Goods

APPENDIX B

	Canada Border Services Agency Agence des services frontaliers du Canada	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Evidence seizure no. / N° de saisie de la preuve</td> </tr> <tr> <td style="padding: 2px;">KIA ref. no. / N° de réf. date KIA</td> </tr> <tr> <td style="padding: 2px;">Office / Bureau</td> </tr> <tr> <td style="padding: 2px;">Date (Y-M-D) / (A-M-J)</td> </tr> <tr> <td style="padding: 2px;">U.C.I. no. / N° de la CMR</td> </tr> </table>	Evidence seizure no. / N° de saisie de la preuve	KIA ref. no. / N° de réf. date KIA	Office / Bureau	Date (Y-M-D) / (A-M-J)	U.C.I. no. / N° de la CMR	
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KIA ref. no. / N° de réf. date KIA								
Office / Bureau								
Date (Y-M-D) / (A-M-J)								
U.C.I. no. / N° de la CMR								
EVIDENCE SEIZURE RECEIPT - REÇU DE SAISIE DE LA PREUVE								
<p>PROTECTED WHEN COMPLETED</p> <p><u>Note:</u> The submission of this form is intended to enforce the law, especially as it concerns the laws relating to the importation and exportation of goods and is protected under the provisions of the Privacy Act. The form is stored in personnel information files, Customs Information Record system, no. CQSA PPU 010.</p>	<p>PROTÉGÉ LORSQUE REMPLI</p> <p><u>Note:</u> Les renseignements que contiennent ce formulaire sont recueillis dans le but d'appliquer la loi, principalement les lois ayant trait à l'importation et l'exportation des marchandises et sont protégés par les dispositions de la Loi sur la protection des renseignements personnels. Le formulaire est conservé dans le fichier de renseignements personnels concernant les registres de la division des renseignements n° AQRO PPU 010.</p>							
<table style="width: 100%;"> <tr> <td style="width: 50%;">Surname / Nom de famille</td> <td style="width: 50%;">Given name / Prénom</td> </tr> <tr> <td colspan="2" style="height: 40px; vertical-align: bottom;">Address / Adresse</td> </tr> <tr> <td colspan="2" style="height: 100px; vertical-align: bottom;">Statement of evidence / Énoncé de la preuve</td> </tr> </table>			Surname / Nom de famille	Given name / Prénom	Address / Adresse		Statement of evidence / Énoncé de la preuve	
Surname / Nom de famille	Given name / Prénom							
Address / Adresse								
Statement of evidence / Énoncé de la preuve								
<table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> The goods described have been seized under section 110(3) of the Customs Act, as it is believed on reasonable grounds that the goods will afford evidence in respect of a contravention of the Customs Act or the regulations. </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Les marchandises décrites ont été saisies en vertu de l'article 110(3) de la Loi sur les douanes puisqu'il est soupçonné, sur des motifs raisonnables, qu'elles contiennent des éléments de preuve par rapport à une infraction à la Loi sur les douanes ou au règlement afférent. </td> </tr> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> The goods described have been seized under section 495(2) of the Criminal Code, as it is believed on reasonable grounds that the goods will afford evidence in respect of an offence against the Criminal Code or any other Act. </td> <td style="vertical-align: top;"> <input type="checkbox"/> Les marchandises décrites ont été saisies en vertu de l'article 495(2) du Code criminel puisqu'il est soupçonné, sur des motifs raisonnables, qu'elles contiennent des éléments de preuve par rapport à une infraction au Code criminel ou toute autre loi du Parlement. </td> </tr> </table>			<input type="checkbox"/> The goods described have been seized under section 110(3) of the Customs Act, as it is believed on reasonable grounds that the goods will afford evidence in respect of a contravention of the Customs Act or the regulations.	<input type="checkbox"/> Les marchandises décrites ont été saisies en vertu de l'article 110(3) de la Loi sur les douanes puisqu'il est soupçonné, sur des motifs raisonnables, qu'elles contiennent des éléments de preuve par rapport à une infraction à la Loi sur les douanes ou au règlement afférent.	<input type="checkbox"/> The goods described have been seized under section 495(2) of the Criminal Code, as it is believed on reasonable grounds that the goods will afford evidence in respect of an offence against the Criminal Code or any other Act.	<input type="checkbox"/> Les marchandises décrites ont été saisies en vertu de l'article 495(2) du Code criminel puisqu'il est soupçonné, sur des motifs raisonnables, qu'elles contiennent des éléments de preuve par rapport à une infraction au Code criminel ou toute autre loi du Parlement.		
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<table style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">Seizing officer / Agent responsable de la saisie</td> <td style="width: 50%; text-align: center;">Badge no. / N° de l'insigne</td> </tr> </table>			Seizing officer / Agent responsable de la saisie	Badge no. / N° de l'insigne				
Seizing officer / Agent responsable de la saisie	Badge no. / N° de l'insigne							
RETURN OF EVIDENCE - RENVOI DE LA PREUVE								
<p>The above evidence was returned on / Les preuves susmentionnées a été renvoyée le</p> <table style="width: 100%;"> <tr> <td style="width: 50%; text-align: center; height: 40px;">Date</td> <td style="width: 50%; text-align: center; height: 40px;">Location / Endroit</td> </tr> <tr> <td style="width: 50%; text-align: center; height: 40px;">Person to whom returned / Personne qui a reçu la preuve</td> <td style="width: 50%; text-align: center; height: 40px;">Continued officer / Agent des douanes</td> </tr> </table>			Date	Location / Endroit	Person to whom returned / Personne qui a reçu la preuve	Continued officer / Agent des douanes		
Date	Location / Endroit							
Person to whom returned / Personne qui a reçu la preuve	Continued officer / Agent des douanes							
<div style="display: flex; justify-content: space-between;"> CSG 40470 CBSA COPY - EXEMPLAIRE DE L'ASFC Canada </div>								

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1

ARREST AND DETENTION POLICY AND PROCEDURES

9/12/2015

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to arrest and detain suspect persons when the arrest and detention is lawful and is conducted in accordance with these policy guidelines.

DEFINITIONS

2. See Glossary.

AUTHORITIES

Criminal Code

3. Sections 25 and 27 – Provides officers with the legal authority to use as much reasonable force as is necessary in the administration and enforcement of their duties.
4. Section 26 – A peace officer may be held criminally liable for the use of excessive force. The pertinent sections of the *Criminal Code of Canada* are 25, 26, 27, 34, 35, 36, and 37. Failure to exercise sound judgement could lead to legal ramifications.

Note: It is the officer who is responsible for the health and safety of persons who must be restrained.

5. Subsection 495(1) – Authorizes officers to arrest persons found committing or known to have committed a criminal offence.
6. Subsection 495(2) – Sets limitations on when an officer will arrest persons found committing or known to have committed a criminal offence.
7. Section 496 – Provides officers the authority to issue an Appearance Notice to a person who has not been arrested as per the limitations described in subsection 495(2).
8. Section 497 – Authorizes officers to release from custody persons arrested, with or without warrant, for an offence described in section 496 if public interest and court appearance are satisfied.
9. Subsection 503(1) – Authorizes officers who arrest a person with or without warrant, to detain the person in custody and requires them to take the person before a justice within twenty-four hours after their arrest.

BACKGROUND

17. In the past, BSO's as peace officers were accorded powers of arrest that were limited to enforcing the *Customs Act*.
18. In 1998, Bill C-18, *An Act to Amend the Customs Act and Criminal Code*, received Royal Assent. The legislation provides designated border services officers with the authority to arrest for any criminal offence encountered at a customs office while performing normal duties, or when acting in accordance with section 99.1 of the *Customs Act*. In particular, these offences include child abduction, possession of stolen property, and impaired driving. Designated officers also have the authority to enforce outstanding warrants for arrest under the *Criminal Code*.

Note: Refer to *Criminal Code Offences Policy and Procedures* for guidelines pertaining to designated and non-designated officers.

POLICY GUIDELINES

General

19. Except in exigent circumstances, officers will notify their superintendent of an arrest or detention as soon as possible.
20. Superintendents will review decisions concerning the detention or arrest of a person and discontinue the detention or arrest where it is evident that charges will not be laid or the person's presence at the CBSA office is no longer required.
21. Officers will caution importers or their agent concerning the making of statements when, during the course of a seizure or penalty action involving high value goods, it becomes apparent that the threshold for the initiation of prosecution action has been exceeded and criminal charges may also be laid.

Detention

22. Persons are deemed to be detained under the *Charter of Rights and Freedoms* and are entitled to all the provisions of section 10 of the Charter when they are not free to leave the confines of the CBSA area once all routine CBSA processing has been completed.
23. As soon as a decision to detain a suspect is made, as in the case of a personal search, a suspect must be informed that they are being detained, advised of the reason for the detention and cautioned.
24. Suspects must indicate they understand, be asked if they wish to contact counsel, and be informed that they will be provided with access to a telephone if they wish to do so.

Arrest

25. Officers will make an arrest, subject to restrictions in 495(2) of the *Criminal Code*, in situations concerning serious infractions of the law and where the criteria found in the CBSA Prosecution Policy are met. These include offences involving:
 - a) narcotics;
 - b) firearms;
 - c) prohibited goods such as child pornography;
 - d) controlled or regulated goods, including all permit and Other Government Department (OGD) requirements;
 - e) evasion of revenues exceeding \$1000.00 in commercial cases;
 - f) evasion of revenues exceeding \$2000.00 in personal cases; and,
 - g) hindering an officer.
26. Designated officers will make an arrest, subject to restrictions in 495(2) of the *Criminal Code*, for *Criminal Code* infractions where the criteria found in the *Criminal Code* Offences Policy and Procedures are met.

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures.

27. Officers may arrest non-residents of Canada involved in smuggling goods into Canada in a wilful and premeditated manner and/or in instances involving the smuggling of high value goods.
28. Officers may arrest Canadian residents, subject to the restrictions in 495(2) of the *Criminal Code*, involved in the smuggling of high value goods.
29. Officers will not arrest a person under the age of 12, as they cannot be convicted of an offence.
30. For matters involving *Customs Act* offences, the Criminal Investigation Division (CID) will be contacted and apprised of the situation.
31. In cases of doubt relating to *Customs Act* offences, the CID will be consulted for guidance.
32. In cases of criminal prosecutions involving offences that are the primary responsibility of the CBSA such as the *Customs Tariff, Export and Import Permit Act*, etc. the regional Investigations office will be contacted and advised of the situation.

Rights of the Individual

33. When a person is not free to leave the custody of an officer or the confines of a customs office because they are the subject of enquiries, the person is considered detained and their rights under the *Canadian Charter of Rights and Freedoms* must be respected.
34. When a person is detained or placed under arrest, their rights under the *Canadian Charter of Rights and Freedoms* must be respected.
35. Persons must be informed promptly of the reasons for their arrest or detention, that they have the right to retain and instruct counsel without delay, and be cautioned regarding the making of statements.
36. A person who is detained in accordance with the Charter for customs purposes will be advised of their right to counsel and cautioned regarding the making of statements. This is regardless of whether the person is also considered detained in accordance with the Charter for immigration purposes.
37. Customs processing must be concluded before persons are removed for Immigration detention.

38. A person who is detained or arrested must be allowed the opportunity to contact counsel of their choice before any further action is taken (e.g., interview, search to recover evidence, etc.) except when a personal search is already underway. In these cases, persons will be given the opportunity to contact counsel as soon as the personal search is complete.

Arrest of Foreign Nationals

39. Officers will inform arrested persons identified as being a foreign national (a person who is not a Canadian citizen including a stateless person) of their entitlement to contact the embassy or consulate officials of their home country once all arrest formalities have been completed.
40. Officers will allow arrested foreign nationals to contact the embassy or consulate officials of their home country. This is in addition to being allowed to contact counsel.

Note: In the case of an arrest for an impaired driving violation, the contacting of embassy or consulate officials will not delay any breath testing that must be performed.

Note: Refer to Part 6, Chapter 7, *Criminal Code Offences Policy and Procedures*.

41. Officers will notify Citizenship and Immigration Canada (CIC) as soon as possible after the arrest of a foreign national, including foreign nationals temporarily residing in Canada (e.g. work or student visas, Minister's Permit).
42. Officers will advise the CID or police when they arrive to take custody of a foreign national that they have been informed of their entitlement to contact embassy or consulate officials and whether contact has been made.

Frisks

43. It is strongly recommended that officers of the same sex as the person to be frisked conduct frisks.

Note: It is recognized that in certain situations and at smaller ports this will not always be possible.

44. A frisk for weapons will always be conducted whenever a person is being detained or arrested, or if an officer has reason to suspect that a person is carrying a concealed weapon or the officer or public's safety is at risk.

45. Prior to placing an individual in a detention cell or secure area the person must be frisked for weapons, including but not limited to razor blades, lock picks, pins, and plastic explosives.
46. Evidence frisks are not to be conducted to solely disprove a person's declaration unless there are indicators or other evidence to suggest the person has misstated or purposely concealed the truth.
47. A frisk for evidence will always also entail a frisk for weapons. A frisk for weapons, however, will not necessarily constitute a frisk for evidence.
48. Frisks, whether for weapons and/or evidence, will only be conducted by patting down the outer clothing that is covering a person's body.
49. All frisks will be carried out with as much discretion and privacy as possible.
50. Frisks will be conducted in the presence of another officer to safeguard against any unwarranted allegations of wrongdoing.
51. Where available, officers will use a metal detector wand to augment a manual frisk.

Note: Before using the wand, persons must be asked if they are wearing a pacemaker or other similar heart device. Those who identify themselves as wearing one should only be frisked manually.
52. In the event that a prohibited or restricted weapon is found, the person is to be immediately placed under arrest, advised, and cautioned.
53. Officers will discontinue personal searches when they find that because of a frisk for evidence and/or weapons their reasonable grounds for conducting a further personal search have disappeared.

Handcuffs

54. Based on risk, officers have the authority to handcuff persons who are lawfully arrested or detained. Officers must assess the risk and act on reasonable grounds when deciding to handcuff a person. Reasonable grounds may include, but is not limited to, threat posed to the officer, another officer, members of the public, protecting the person, potential flight risk, and/or preventing the destruction of evidence.
55. Officers will apply handcuffs using techniques learned in training.
56. Officers will not at any time, nor under any circumstances, handcuff a person to any object.

57. Officers will not handcuff themselves to a detained or arrested subject.
58. Officers are authorized to carry only handcuffs that have been approved and issued by the CBSA.
59. Officers will carry their issued handcuffs on their person in an easily accessible manner while on duty.
60. CBSA approved handcuffs will be issued after officers have successfully completed approved training.

Use of Force

61. Officers may only use force in respect of the duties they are authorized to perform in the course of their duties as officers of the CBSA. The CBSA will not support officers who use force outside of the scope of their duties, employment and (legal) authority.
62. Officers will only use as much force as is necessary, i.e. the use of reasonable force to defend themselves and the public, to control subject behaviour, or to administer or enforce the law. The amount of force to be used will be that which is proportional to the exhibited behaviour.
63. Officers must select the use of force option(s) that is the most reasonable intervention option(s) based on their assessment of the risk, situational factors and exhibited behaviour. Use of force options range from officer presence to the use of deadly force and include the use of control techniques, intermediate devices (OC spray), impact weapons (baton) and firearms (duty-firearm) (refer to the IMIM in Appendix "A").
64. The CBSA will support officers who use force so long as it is necessary to defend themselves, follow officers, employees of other government departments, persons in custody or members of the public, or to execute their duties, provided their actions are in accordance with the law and are justified, reasonable and consistent with CBSA policy and training.
65. Officers will attempt to control persons without jeopardizing their own safety.

Dispensing Prescription Medication

66. Officers will remove prescription medications from arrested persons and follow CBSA policy and procedures for dispensing them when necessary.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures for detailed guidelines.

Taking of Notes and Completion of Documentation

67. Whenever an arrest is made, officers will take appropriate notes and record these notes in the BSF556 Officers Notebook.
68. Whenever an arrest is made, officers will complete the identification and arrest sections of the Personal Search and Arrest Report (BSF667) found in the Integrated Customs Enforcement System (ICES) and, for *Criminal Code* offences, the *Criminal Code* Incident Report (E641).

Note: Non-automated ports must complete a paper version of the Personal Search and Arrest Report (BSF667).

Note: Refer to the ICES User Reference Manual, Chapter 20 for procedures on completing the Personal Search and Arrest (BSF667) window contents.

Note: Refer to *Criminal Code* Offences Policy and Procedures, Appendix C for a sample of the E641.

Release from Arrest

69. Where a person has been arrested and it is subsequently determined that charges against the person will not be laid, the person will be released from arrest immediately upon completion of CBSA processes.
70. Persons who are arrested and against whom charges will be laid may be released from arrest by:
- a) compelling their appearance in court by way of a summons, which will be issued by the responsible police agency;
 - b) the CID or responsible police agency; or
 - c) a designated officer upon issuance of an Appearance Notice (Form 9).

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures and Appendix B of the same chapter for a sample of Form 9.

ROLES AND RESPONSIBILITIES

Border Services Officers

71. Border Services Officers (BSO) are responsible for:

- a. enforcing the *Customs Act*, *Criminal Code*, and other federal statutes in accordance with legislative requirements, established policies, and standard operating procedures;
- b. ensuring arrests and subsequent release of individuals are completed in accordance with legislative requirements and these policy and procedure guidelines;
- c. notifying the superintendent as soon as possible when an arrest has occurred;
- d) wearing their issued handcuffs at all times while on duty and ensuring that they are maintained and in good working order;
- e) reporting arrests by completing a Personal Search and Arrest (BSF667) in ICES or, for non-automated ports, completing a paper copy of the BSF667 report;
- f) completing a *Criminal Code* Incident Report (E641) when required;

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences, Appendix C for a sample of the E641.

- i. completing a Use of Force Report (E642) if required;

Note: Refer to part 6, Chapter 5, Use of Force, Appendix B for a sample of the E642.

- ii. maintaining an open line of communication with the police agency of jurisdiction for their area; and
- iii. recording and maintaining detailed notes of an occurrence in the issued BSF556 Officers Notebook and preparing the necessary documentation for further investigation and prosecution.

78. Inform the person that they are being detained or arrested and of the reason for it.

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures for statements relating to *Criminal Code* offences (i.e., I am arresting you for impaired driving).

- a) When exercising powers of arrest use one of the following statements:

"I am arresting you for:

- i) failing to properly declare the goods in your possession as required by the *Customs Act*,
 - ii) smuggling or attempting to smuggle into Canada goods, the importation of which is prohibited, controlled, or regulated by or pursuant to the *Customs Act* or any Act of Parliament,
 - iii) under the provisions of the *Criminal Code*, assaulting/obstructing a peace officer,
 - iv) hindering or attempting to hinder or prevent me from carrying out my duties as authorized under the *Customs Act*."
- b) In cases of detention, modify the previous statement by substituting the words "I am arresting you for" with "I am detaining you for suspicion of".

Note: Officers are advised against quoting specific sections to arrested individuals as it is not necessary to do so until such time as a criminal charge is laid.

79. Confirm verbally that the person understands the enforcement action.
80. Note the time of arrest or detention and any answer received in your notebook.
81. Read the person the following statement concerning their right to counsel:

"It is my duty to inform you that you have the right to retain and instruct counsel without delay.

You have the right to obtain legal advice without charge from duty counsel. Duty counsel is available at: _____ during the following hours: _____.

You have the right to apply for legal assistance without charge through the Provincial Legal Aid Program. The Legal Aid telephone number in this area

is: _____. Their office is located at: _____ and office hours are from: _____.

Do you understand what has been said to you?"

Note: For *Criminal Code* offences such as impaired driving, it may be necessary for the officer to utilize the police agency of jurisdiction wording concerning the individuals right to counsel for court purposes.

82. If a person gives an indication that they do not understand the right to counsel, take steps to facilitate their understanding. This may require going beyond the mechanical recitation of the above notification.
83. If a language problem is identified, take all reasonable steps to obtain an interpreter or other person capable of speaking the language of the person.
84. Note the time right to counsel was read, understood, and any answer received in your notebook.
85. When satisfied that the advisement is understood, ask the person the following question:

"Do you wish to retain and instruct counsel or have access to legal aid?"
86. Note the information provided, the time, and any answer received in your notebook.
87. Allow the suspect to contact counsel of choice if requested.

Note: If a call takes place in a closed or private room, the door to the room may be closed only if the suspect can still be observed (i.e., through a window). If a call takes place in an open room, all officers will maintain an appropriate distance so that the conversation is private and cannot be overheard.

88. To ensure that any statement or admission of guilt, etc. made by a person after detention or arrest is admissible evidence in court, caution the individual concerning such statements by reading the following caution immediately after notifying the person of the right to counsel:

"You need not say anything. You have nothing to hope from any promise or favour, or nothing to fear from any threat, whether or not you do say anything. Anything you do say may be used in evidence. Do you understand?"
89. Note the time and any answer received in your notebook.

90. If a person has waived their right to counsel, frequently advise them that they may change their mind and invoke their right to counsel at any time in the process.
91. At any time when a person has admitted to unlawful conduct and has not been previously cautioned, immediately caution them concerning the making of any further statements.

Arrest of Foreign Nationals

92. Determine if in fact the person being arrested is a foreign national, in other words, a citizen of another country.
93. After arresting, advising of their right to contact counsel, and cautioning against making statements, advise foreign nationals that in addition to their right to contact counsel they are also entitled to contact the embassy or consulate of their home country. Foreign nationals may contact their embassy or consulate and counsel while under detention as well.

Note: In the case of an arrest for an impaired driving violation, the contacting of embassy or consulate officials will not delay any breath testing that must be performed.

Note: Refer to Part 6, chapter 7, *Criminal Code* Offences Policy and Procedures.

94. Allow the person to contact the embassy or consulate of their home country if they wish to.

Note: The embassy or consulate officials contacted will ensure that the arrested person's rights under Canadian law are protected and will, if requested, notify the person's family of the arrest. While embassy or consulate officials may assist the person in obtaining legal counsel, they will not, as a matter of course, make any arrangements for the person's release.

95. Record in your notebook who was called, if contact was made, and the time of the call.
96. Notify Citizenship and Immigration Canada (CIC) as soon as possible of the arrest of any foreign national.
97. Advise the CID or police if they attend to take custody that the person was advised of their entitlement and whether or not contact was made.

Frisk for Weapons

100. In the event that a prohibited or restricted weapon is found, place the person under arrest, advise and caution them.

Handcuffing

General

101. Handcuff arrested persons and detained persons in accordance with the policy guidelines.
- 102.

103. Record in your BSF556 Officers Notebook the time, circumstances, and whether force was required whenever you place a person in handcuffs.
- 104.
- 105.
- 106.
107. In each instance where handcuffs are used, record the necessary information on the Personal Search and Arrest (BSF667) in ICES and in your notebook. For non-automated CBSA offices, the BSF667 report must be completed manually.
- Note: Refer to the ICES User Reference Manual, Chapter 20 for procedures for completing the Personal Arrest and Search (BSF667) window contents.
108. Immediately report the loss of any handcuffs to the superintendent on duty.

Handcuff Application

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Arrest and Detention

Handcuff Maintenance

124. Ensure that your issued handcuffs are:

- a) in good working order;
- b) inspected frequently, cleaned, and lightly oiled (recommended monthly);
- c) kept free of dirt and other foreign substances particularly in the ratchet and key hole where dirt may hinder handcuff functioning; and
- d) repaired or replaced if damaged.

Officer Safety

125. Use technical aids such as metal detector wands, goggles, and latex gloves as deemed appropriate.

126. Be aware of the location of First Aid Kits and what to do in cases of emergency.

127.

128.

129.

130.

131.

Contacting Counsel

132. If a person is not permitted to contact counsel immediately after being arrested or detained, it is a *prima facie* violation of the *Charter of Rights and Freedoms*, therefore:

- a) proceed with extreme care in continuing the investigation before allowing the person detained or arrested to contact counsel; and
- b) make detailed notes of the circumstances in your notebook.

Note: If the arrest is made while a personal search is in progress, complete the search prior to allowing the person to contact counsel.

133. If the person elects to contact counsel, they will be permitted every reasonable opportunity to do so. If they get no answer, or a busy signal, they will be allowed to try again or to call someone else.

134. Officers will give the person as long as is necessary and as many attempts as are necessary to contact counsel.

135. If a person's attempt to contact counsel results in an unreasonable delay and they still wish to contact counsel, suggest that they attempt to contact a different lawyer or duty counsel.
136. If the person elects to contact counsel:
 - a) do not suggest the name of counsel to the person;
 - b) provide access to a telephone and a telephone book or list of lawyers in the area and ensure the list includes the local Legal Aid phone number;
 - c) once the person has determined the counsel they wish to contact, dial the number and make the initial contact with counsel to confirm that this is in fact who is being contacted;
 - d) pass the phone to the person and provide them privacy while maintaining careful observation of the person to ensure they do not dispose of any evidence;
 - e) maintain an appropriate distance from the person to permit the call to be private and so that the conversation with counsel cannot be overheard; and
 - f) record in your notebook the time that the attempt to contact counsel was made, the telephone number called, any conversation you had with counsels office, and whether or not the contact of counsel was successful.
137. If long distance charges are involved allow the call to be charged to the CBSA office.
138. Allow a person to telephone a family member to assist in contacting counsel if they request to do so. A call to a family member is not to be considered as an opportunity to retain and instruct counsel. In such cases, permit the person subsequent opportunities to contact counsel.
139. If during the person's telephone call, counsel asks to speak to the arresting officer or the superintendent, accommodate the request. Limit these conversations with counsel to the reasons for the arrest or detention and any procedure that is expected to follow. Do not get involved in arguments or debates with counsel.

Contacting Police

152. Notes taken during interviews should include:

- a) periodic recordings of the time;
- b) details of any questions asked;
- c) answers given;
- d) persons involved;
- e) evidence found;
- f) the condition of the accused at the time of the offence or investigation; (i.e., mental and physical health, any impairment, etc.);
- g) the ability of the accused to understand the discussion and questions asked; and
- h) a record of all persons who have contact with the accused.

153. Should another officer, superintendent, senior officer or other person in authority, who was not present during the original caution and questioning, enter the room where the person is held or where an interview is being conducted, this officer must immediately give a secondary caution upon entering the room. They will read the following caution:

"If you have spoken to any border services officer, police officer, or to anyone in authority or if such a person has spoken to you in connection with this case, I want it clearly understood that I do not want it to influence you in making any statement."

Documentation

154. Whenever an individual is arrested or detained, complete the Personal Search and Arrest (BSF667) in ICES or, for non-automated ports, complete a paper copy of the BSF667 report.

Note: Refer to the ICES User Reference Manual, Chapter 20 for procedures regarding completion of the Personal Search and Arrest (BSF667) window contents.

Detention in Custody

155. When an individual is arrested, hold them in custody until such time as the CBSA enquiries are complete and the person is either released or turned over to the CID or the police agency of jurisdiction.
156. Consider all persons under arrest as a potential threat to the safety of the public and staff at any CBSA facility, as well as to their own physical well being (e.g., suicide or attempted suicide).
157. Place persons under arrest in a sterile CBSA standard detention cell or, where a sterile CBSA standard detention cell is not available, in a secure area of the office, where possible out of public view, and follow the policies and procedures pertaining to the care and control of persons in custody.

Note: Refer to Care and Control of Persons in Custody Policy and Procedures.

REFERENCES

158. *Customs Act*
Criminal Code
Canadian Charter of Rights and Freedoms
D and R Memorandum
ICES User Reference Manual

Part 6

SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1

ARREST AND DETENTION POLICY AND PROCEDURE

Appendix A

AUTHORITIES, LIMITATIONS, AND COMMONLY ENCOUNTERED OFFENCES FOR WHICH BORDER SERVICES OFFICERS MAY ARREST

9/12/2015

APPENDIX A

Authority for Arrest

Criminal Code

495(1) – A peace officer may arrest without warrant:

- (a) a person who has committed an indictable offence or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence, or
- (b) a person whom he finds committing a criminal offence, or
- (c) a person in respect of whom he has reasonable and probable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Limitations to Arrest

Criminal Code:

495(2) – A peace officer shall not arrest a person without warrant for

- (a) an indictable offence mentioned in section 553,
 - (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
 - (c) an offence punishable on summary conviction,
- in any case where
- (d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence, or
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence, may be satisfied without so arresting the person, and
 - (e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend in court in order to be dealt with according to law.'

APPENDIX A

Common Arrest Offences

<u>Act</u>	<u>Section</u>	<u>Offence</u>	<u>Procedure</u>
<i>Customs Act</i>	153 (a)	Making false or deceptive statements with respect to the importation of goods.	Dual
	153 (c)	Wilfully evading or attempting to evade the payment of duties or compliance with the Act.	Dual
	153.1	Hindering a border services officer.	
	159	Smuggling goods subject to duties or goods prohibited, controlled, or regulated by an Act of Parliament.	Dual
<i>Criminal Code</i>	129	Obstructing a Peace Officer.	Dual
	253(a)	Operating a vehicle, vessel, aircraft, or railway equipment while impaired by alcohol or a drug.	Dual
	253(b)	Operating a vehicle, vessel, aircraft or railway equipment having consumed alcohol over .08	Dual
	270(1)	Assaulting a Peace Officer.	Dual
	279-283	Kidnapping, Hostage taking and Abduction	Kidnapping - Indictable Hostage Taking – Indictable Abduction – Indictable depending on

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Arrest and Detention

APPENDIX A section

<u>Act</u>	<u>Section</u>	<u>Offence</u>	<u>Procedure</u>
	270.1(1)	Disarming a peace officer.	Dual
	354	Possession of Property Obtained by Crime	Dual when under \$5000 CAD
	357	Bringing into Canada Property Obtained by Crime	Indictable

Part 6

SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1

ARREST AND DETENTION POLICY AND PROCEDURE

Appendix B

OFFENCES AGAINST A BORDER SERVICES OFFICER

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Arrest and Detention

APPENDIX B

UNDER REVIEW

9/12/2015

1

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 2

CARE AND CONTROL OF PERSONS IN CUSTODY POLICY AND PROCEDURES

09/28/12

20. Personal searches will not be conducted in a detention cell, unless the cell is specifically designated for that purpose (e.g. dual purpose detention cell/search room).
21. Notices in both official languages informing the arrested or detained person of their right to counsel must be posted in a conspicuous place in close proximity to the detention cell or secure area where persons are held in custody.
22. A Canadian Police Information Centre (CPIC) query will be conducted on all persons in custody unless the check was previously conducted during the course of normal CBSA processes and arrest/detention procedures.
23. Prior to placing an individual in a detention cell, officers must ensure that the cell or area is sterile (clean and clear), and make note of this in their notebook and the detention log.
- 24.
- 25.
26. If a person is held in a secure area, the officer must remain with them at all times.
- 27.
28. Except in an emergency and where operationally viable, an officer should not enter the detention cell where a person of the opposite sex is being held unless accompanied by an officer of the same sex as the person, or by a police officer from the responding police agency.

Note: Refer to the "Emergency and Evacuation" section of this policy.

Care and Health of Persons Held in Custody

29. Information from any medical alert card, bracelet, or necklace must be recorded in the detention log and in the officer's notebook.
- 30.
- 31.
32. If the persons' medical condition requires special consideration or handling, the immediate supervisor on duty is to be advised immediately.

Note: The *Privacy Act* regulates the collection, retention, use, and disclosure of personal information, including medical information obtained relating communicable disease. Unless there is a demonstrated or reasonably foreseeable threat to the health and safety of others, or a warrant pursuant to a provincial health statute or a court order exists, medical information indicating the person is infected with a communicable disease must not be collected, retained, or disclosed.

- 33.
34. Officers will advise the immediate supervisor on duty if a person refuses medical assistance.
35. Officers will document refusals in their notebook and the detention log.

45.

46.

47.

48.

49.

50.

51.

Religious Devotion

52. The CBSA will not interfere with the religious rights of any person held in custody except where this is a risk to the safety of the officer and/or the security of the person.

Note: The safety of officers and the security of persons in custody are paramount and take precedent over individual acts of religious devotion.

53. Persons practicing the Sikh religion must have their kirpans (ceremonial dagger or sword) removed from them upon arrest or detention.

54. If it is deemed necessary, officers may unsheathe kirpans preferably out of view of the owner whenever possible.

54. Officers will document the removal of the kirpan on a Personal Search and Arrest Report BSF667 in ICES and keep it with the individuals' personal effects

Note: At non-automated sites, a paper copy of the BSF667 must be completed.

55. Officers will instruct arrested and detained persons practicing the Sikh religion who are wearing a kes or pagari (turban) to remove it for a search

of the material and hair. Where practical, this will be done in private (e.g. search room).

56. After the search, officers will allow persons to replace their kes or pagari if the person is not displaying signs of depression or suicide.

Monitoring and Observation

57. Where it is operationally viable persons held in custody are to be monitored and observed by an officer of the same sex.
- 58.
- 59.
- 60.
61. Officers will record physical checks in the detention log and their notebook, including the persons' responses and the condition of the cell.
- 62.
63. Officers will record in the detention log and their notebook all observations and the results of physical checks of persons held in custody.
- 64.
- 65.

EN Part 6 Chapter 2

Care and Control of Persons in Custody

66. CCTV/video monitoring equipment will not capture or transmit audio signals.
67. At CBSA offices where CCTV or video monitoring equipment is installed, the equipment must be maintained in working order. Any and all malfunctions, including concerns about picture quality or camera angles, must be documented and reported to the superintendent on duty who will take appropriate steps to remedy the situation.
- 68.
- 69.

Cutting Instrument

- 70.
- 71.
- 72.

- e) ensuring that the immediate supervisor on duty is informed promptly or as soon as is practical, of any problems concerning persons held in custody.

Immediate Supervisors

79. Immediate supervisors are responsible for:

- a) ensuring all officers are familiar with this policy and procedures;
- b) ensuring all officers are familiar with Emergency and Evacuation Procedures related to persons arrested or detained and held in custody;
- c) ensuring that this policy and procedures, the detention log, and emergency and fire procedures are kept in a location close to the cell, are easily accessible, and are up to date in accordance with procedures;
- d)
- e)
- f) taking appropriate corrective action on any breaches of this policy.

Managers/Chiefs

80. Managers/chiefs are responsible for:

- a) ensuring compliance with this policy and procedures; and
- b) ensuring officers receive any necessary training.

Enforcement Branch

81. The Borders Enforcement division is responsible for:

- a) developing, modifying, and approving policies in accordance with court jurisprudence, related to the administration and the care and control of individuals under arrest or detention being held in custody; and
- b) monitoring adherence to this policy by the regions.

PROCEDURES

General

82. When a person is arrested or detained, hold them in custody until such time as the enquiries are completed and the person is either released or turned over to the CID or the responding police agency.

Note: Refer to Arrest and Detention Policy and Procedures.

83. Consider all persons held in custody as a potential threat to the safety of the public and staff at any CBSA facility, as well as their own physical well being (e.g. suicide or attempted suicide).

84. Prior to placing persons under arrest or detention in a sterile detention cell or secure area of the CBSA facility, conduct a frisk for weapons.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Arrest and Detention Policy and Procedures for guidelines on conducting frisks.

85. Place persons under arrest or detention in a sterile detention cell or secure area of the CBSA facility.

Note: In situations where the Vehicular Transport of Persons Under Arrest or Detention policy is applied, the subject may be transported to the responding police agency location or an alternate CBSA facility. Refer to the Vehicular Transport of Persons Under Arrest or Detention policy in the EN manual Part 6 Chapter 8 for further information.

86.

87.

88. When a person is being held in custody pending transfer to the CID or responding police agency, or their release:

- a) Conduct a CPIC check, if it has not been conducted during the normal process or the arrest/detention process.
- b) Whenever possible use verbal persuasion to avoid a physical confrontation.
- c) Conduct a frisk of the person for weapons if not conducted during the arrest/detention process.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

- d) Ask the person to remove all personal articles carried on their person.
- e)

f)

g)

- h) Place articles in an evidence bag.

- i) Record the articles on the personal effects record section of the Personal Search and Arrest **BSF667** in ICES or for non-automated CBSA offices complete a paper copy of the BSF667.

Note: Refer to the User Guide of ICES, chapter 20, to learn how to fill out the Personal Search and Arrest BSF667 in ICES.

- j) Seal the evidence bag and mark it with the person's name and the words "personal effects". These articles will be turned over to the CID or police upon their arrival, or to the person upon their release.
- k) Seize any item which would be used as evidence of the offense. Take detailed notes of the seizure (time, seized item, location of concealment, etc.) in your notebook.
- l) Secure and maintain continuity of evidence.
- m) Note any allegations and/or observations in your notebook.
- n)

- o) Ascertain if the person is on any prescription medication or if they have any other medical requirements or conditions (e.g. diabetes, heart problems, etc.).
- p) Note any requirements or conditions on the Personal Search and Arrest Report **BSF667** in ICES or for non-automated CBSA offices complete a paper copy of the BSF667.
- q) Remove all prescription drugs or other drug substances from the person.

Note: See Care and Health of Persons Held in Custody in the Policy section of this chapter and Dispensing Prescription Medication procedures that follow.

- r) Provide persons with medical conditions requiring food or fluids at regular intervals with an appropriate food or drink when requested or when the situation warrants.
- s) Provide an appropriate meal if the person is making the request during a meal period (0600 – 0800, 1100 – 1300 or 1700 – 1900).

Note: The cost of the meal must not exceed the meal allowance for government employees. Expenses may be paid from petty cash or as the region deems appropriate.

- t) When a meal is provided, note the following information in the detention log and your notebook:
 - i) name of individual;
 - ii) type of meal requested including religious, medical, or dietary restrictions;
 - iii) type of meal provided;
 - iv) date and time given;
 - v) person's comments, if any, relating to the meal provided; and
 - vi) cost of the meal.

u)

- v) Offer food and beverage whenever a person is being held in custody outside the normal meal periods indicated above if the detention in custody exceeds three hours (e.g. 1930 to 2330 or 0100 to 0500)

Note: Food need be nothing more than a light snack.

- w) Document in the detention log and your notebook each time the person is removed from the cell or secure area including:
 - i) reason for removal from the cell;
 - ii) time of removal;
 - iii) assisting officer; and
 - iv) time the person was placed back in the cell or secure area.
- x) Each time a person held in custody is removed from a detention cell and the policy to handcuff applies, place them in handcuffs.

Note: Refer to Arrest and Detention Policy and Procedures for guidelines on handcuffing.

- y) Advise any relieving officer of any unusual conditions or behaviour of the person being held in custody.
- z) Ensure all documentation is completed and any property (e.g. personal effects) and/or evidence is available prior to turning the person over to the CID or responding police agency.
- aa) Ensure that the receiving officer signs/initials each document as required and that they receive appropriate copies.

Note: Refer to Arrest and Detention Policy and Procedures and *Criminal Code* Offences Policy and Procedures.

Observation and Monitoring

89.

90.

91.

92.

93.

Sick or Injured Person

94.

95.

96.

97.

EN Part 6 Chapter 2

Care and Control of Persons in Custody

98.

99.

100.

Dispensing Prescription Medication

101.

102.

103.

104.

105. Prior to complying with a request for access to prescribed medications, ensure:

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Care and Control of Persons in Custody

- a) the name on the medication container matches the name of the person;
 - b) there is only one type of pill in the container;
 - c) the container label and contents do not appear to be tampered with or substituted;
 - d) the medication is given and self-administered in accordance with the directions on the container label; and
 - e) the date and time of the last dosage administered as stated by the person held in custody, is consistent with directions written on the label and with the request of the person.
106. When complying with a request for administration of prescribed medication, note the following in your notebook and the detention log:
- a) Persons' name;
 - b) name of medication, type of container, and the dosage;
 - c) date and time medication was provided;
 - d) officers name and badge number;
 - e) name and badge number of second officer present;
 - f) name and badge number of immediate supervisor on duty who authorized the request;
 - g) date and time of the last dosage as stated by the person; and
 - h) the person's signature.
- Note: If the person refuses to provide a signature, make notes to this effect.
107. Only provide a single dose of prescription medication at one time.
108. Do not allow the person in custody to have care and control of the full prescription medication under any circumstances.
109. In instances where:
- a) doubt exists regarding the content of the container;

- b) the person requested medications in excess of the prescribed dosage;
- c) the person refuses prescription medication;
- d) the person exhibits signs of alcohol or drug consumption; or
- e) doubt exists regarding the safety of the person, officer, or other person present;

Advise the immediate supervisor on duty to contact the prescribing physician, a physician at a medical facility, or arrange for an ambulance to attend.

REFERENCES

- 110. Royal Canadian Mounted Police (RCMP) Policy and Procedures
Ontario Provincial Police (OPP) Policy and Procedures
Ottawa-Carleton Regional Police Services Policy and Procedures

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 3

ARREST AND DETENTION OF YOUNG PERSONS POLICY AND PROCEDURES

12/07/11

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to search, arrest, and detain young persons when the search, arrest, and detention is lawful and is conducted in accordance with the *Youth Criminal Justice Act* and these policy and procedure guidelines.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Note: In addition to the requirements on arrest and detention legislated by the *Youth Criminal Justice Act*, all authorities for arrest and detention as per the *Criminal Code*, *Charter of Rights and Freedoms*, and the *Customs Act* apply to young persons. Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures, Authorities.

Youth Criminal Justice Act

3. Subsection 25(2) – States that every detained or arrested young person must be advised that they have the right to retain and instruct counsel and be given an opportunity to do so.
4. Subsection 25(9) – A statement that a young person has the right to be represented by counsel must be included in or attached to all documents.
5. Subsection 26(2) – Stipulates that upon issuance of an appearance notice and release of a young person their parent must be advised in writing.
6. Subsection 26(4) – States that if a parent cannot be located or is unavailable then notice will be given to:
 - a) an adult relative known to them and likely to assist; or
 - b) an adult known by them and likely to assist.
7. Subsection 26(6) – States that any notice given must include:
 - a) the young persons' name,
 - b) the charge against them,

- c) the time and place of appearance, and
 - d) a statement that the young person has a right to retain and instruct counsel.
8. Subsection 26(8) – Advises that a notice given in writing may be served personally or be sent by confirmed delivery service.
9. Subsection 30(7) – Requires peace officers to transfer arrested young persons held in custody as soon as practicable to the police so that they may be placed in a designated temporary facility.
10. Subsection 146(2) – An oral or written statement given by a young person is only admissible when:
- a) the statement was voluntary;
 - b) before the statement was made, the officer clearly explained in language appropriate to their age and understanding that:
 - i. they are under no obligation to give a statement;
 - ii. any statement given by them may be used as evidence in proceedings against them;
 - iii. they have the right to consult another person in accordance with paragraph (c); and
 - iv. any statement made by them is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;
 - c) before the statement was made, they were given a reasonable opportunity to consult with:
 - i. counsel; and
 - ii. a parent, or in the absence of a parent, an adult relative, or in the absence of a parent and an adult relative any other appropriate adult chosen by the young person; and
 - d) where they consult any person pursuant to paragraph (c), they have been given a reasonable opportunity to make the statement in the presence of that person.

11. Subsection 146(3) – The requirements set out in paragraph (2)(b), (c), and (d) do not apply to oral statements if they are made spontaneously by the young person before the officer has a reasonable opportunity to comply with the requirements.
12. Subsection 146(4) – A young person may waive their rights under paragraph (2)(c) or (d) but the waiver must be videotaped or be made in writing. When it is in writing, it must contain a statement signed by the young person that they have been apprised of the right being waived.

PURPOSE AND SCOPE

13. The purpose of this policy is to provide guidelines on the search, arrest, and detention of young persons in accordance with the *Youth Criminal Justice Act* whenever a Border Services Officer (BSO) is in a legal position to search, arrest, or detain a young person whether it is under the *Customs Act* or the *Criminal Code*.
14. This chapter is to be used in conjunction with Part 6, Chapter 1, Arrest and Detention, Chapter 2, Care and Control of Persons in Custody, and Chapter 6, Personal Search.
15. This policy applies to all BSOs in the performance of their duties under the *Customs Act*, *Criminal Code*, or the *Excise Tax Act*.

BACKGROUND

16. The *Youth Criminal Justice Act* (YCJA) came into force on April 1, 2003, replacing the *Young Offenders Act*. It contains special provisions respecting young persons 12 years of age or more, but under 18 years of age. It focuses on the importance of accountability, the protection of society, the special needs of young persons, and their rights. The YCJA intends to ensure that the nature of the system's response to an offence should reflect the needs and individual circumstances of a young person.
17. The YCJA is based on a "Declaration of Principles", which state the intention of the Act pertaining to dealings with young offenders. It asserts that the youth justice system must reflect the fact that young persons lack the maturity of adults. It also recognizes that the youth system must be different from the adult system in many respects, including that accountability is consistent with young persons' reduced level of maturity, procedural protections are enhanced, rehabilitation and reintegration are given special emphasis, and the importance of timely intervention is recognized.

Note: See Appendix A for a copy of the *Youth Criminal Justice Act* "Declaration of Principles".

18. While the *Young Offenders Act* permitted the use of alternative measures, the YCJA goes further by providing guidance as to the appropriate use of alternative measures, the types of alternatives, and what their objectives should be. Alternatives offered include Extrajudicial Measures that increase the use of effective and timely non-court responses to less serious offences, expanded Youth Sentencing options, and Custody and Supervision opportunities not previously offered.

POLICY GUIDELINES

General

19. BSOs must comply with all policies and procedures related to the arrest and detention of young persons, including any procedures developed by the responding policy agency.
20. BSOs must explain what is occurring to young persons in a manner that is appropriate to their age and level of understanding.

Reading the Reason for Arrest or Detention, Rights and Caution

21. A BSO must read the reason for arrest or detention, rights and caution verbatim to any person being arrested or detained.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures paragraphs 33-42.

22. BSOs will confirm the age of the person under arrest or detention by using the person's identification. If no identification is available, BSOs will request that the person state his/her age.
23. BSOs must explain to the young person the reason for the arrest or detention, his/her rights, and the caution again in words that are appropriate to the age and level of understanding of the young person.

Contacting Counsel and Parent, Guardian or Other Adult

24. BSOs must advise arrested or detained young persons that they have the right to contact and consult with counsel and a parent, guardian, or if unavailable any other appropriate adult (e.g., guardian, relative, friend of

family), as long as that person is not a co-accused, or under investigation, in respect of the same offence, and allow them the opportunity to do so before they make any statement either orally or in writing.

25. BSOs must advise arrested or detained young persons of these rights at the time of arrest or detention using language that is appropriate to their age and level of understanding.
26. BSOs will also explain to young persons that their wish to contact their parent or an appropriate adult person does not negate their right to contact counsel.
27. BSOs will not contact any person on behalf of the young person unless they are expressly asked to do so by that young person. If so requested, BSOs should note this request in their notebook.
28. BSOs must advise the young person that he/she has the right to contact counsel and a parent, guardian or any other adult person, who is not a co-accused, without delay at any stage in the proceedings and must remind the young person periodically of this right.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines paragraphs 33-42.

29. Following the arrest or detention of a young person, BSOs may continue any questioning but must strictly follow this policy and procedures, otherwise, any additional information obtained beyond the point of arrest or detention may not be admissible as evidence in court.
30. BSOs are legally obligated to allow an arrested or detained young person to consult with both counsel and a parent, guardian or other adult, who is not a co-accused, before the young person makes any statement either orally or in writing in accordance with subsection 146(2) of the *Youth Criminal Justice Act*.
31. If it is his/her wish, a young person must be given the opportunity to have private, face-to-face conversations for a reasonable period of time with his/her parent or other appropriate adult person and/or counsel prior to the taking of any statement.

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Arrest and Detention of Young Persons

32. Prior to any further questioning or the taking of any statement, if the young person chooses to waive his/her right to contact counsel, a parent, guardian or other appropriate adult, the young person must complete the *Youth Criminal Justice Act – Waiver of Right to Consult a Person* (E368-2)

Note: See Appendix B for a copy of form E368-2.

33. Any statement made by the young person is required to be made in the presence of counsel and any other person consulted, if any, unless the young person desires otherwise. If the young person chooses to waive this right, the young person must complete the *Youth Criminal Justice Act – Waiver of Right to Consult a Person* (E368-2).

Note: See Appendix B for a copy of form E368-2.

Handcuffing

34.

35.

Care and Control in Custody

36. Young persons detained in custody are to be kept separate from detained adults.

Note: The YCJA requires that young persons who are detained in custody be kept separate from “adult” offenders. The exception to this requirement is in cases of temporary restraint immediately following their arrest. As CBSA detentions are considered only temporary restraints it is not a legal requirement, however, it is CBSA policy to hold young persons separate from adults.

37. Young persons under arrest and held in custody must be transferred into police custody as soon as is practicable so that they may be placed in a designated temporary facility.

Note: YCJA refers to designated temporary facilities as youth facilities that have been designated for temporary detention by the province.

Contacting Police

38. When contacting police, BSOs must advise them of the fact that they are dealing with a young person.

Appearance Notice and Notice to Parent or Other Appropriate Adult

39. Where a designated officer has issued a Form 5.1 *Youth Criminal Justice Act* - Appearance Notice to a Young Person they must complete a Form 3.1 *Youth Criminal Justice Act* - Notice to Parent or other Appropriate Adult.

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures for guidelines pertaining to the issuance of Appearance Notices.

Note: See Appendix C for a copy of Form 3.1 *Youth Criminal Justice Act* – Notice to Parent or other Appropriate Adult.

Note: See Appendix D for a copy of Form 5.1 *Youth Criminal Justice Act* – Appearance Notice to a Young Person.

40. Where a parent is not available, designated officers must complete a Form 3.1 *Youth Criminal Justice Act*

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures for guidelines pertaining to the issuance of Appearance Notices.

41. A written notice to parent, guardian, adult relative, or other adult may be served personally or sent by mail.

Personal Search

Note: Refer to Part 6, Chapter 6, Personal Search Policy and Procedures for detailed guidelines.

42. Officers will advise young persons of their right to consult a parent or other appropriate adult person **and** counsel in a manner that is appropriate to their age and level of understanding if, prior to conducting a personal search of a young person.
43. Officers will allow a parent or other appropriate adult to be present during a personal search if this is the young person's wish and if that person can attend the CBSA office where the search is to be conducted within a

49. Explain in words appropriate to their age and understanding the reason for their arrest, their rights, and the caution, and what they mean if they are a young person.
50. Record in your notebook what you explained and any responses given by the young person.

Contacting Counsel and Parent or Other Person

51. Advise the arrested young person that they may call their parent or, if they are unavailable, another appropriate adult person (i.e., guardian, relative, friend of family) and, if they wish, allow them a reasonable opportunity to do so.

52. Advise the arrested young person of their right to contact and consult counsel.

53. Allow all reasonable opportunity for the young person to contact counsel.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines pertaining to contacting counsel.

54. Explain to the young person that their wish to contact their parent or an appropriate adult person does not negate their right to contact counsel.
55. Inform the young person of the existence and availability of the applicable systems of duty counsel, free preliminary legal advice, and legal aid in the jurisdiction.
56. Refrain from questioning the young person until they have been able to talk to a parent or appropriate adult person and/or counsel.
57. Provide a private room that is in the view of the BSOs and ample time for the young person to consult with their parent or appropriate adult person and/or counsel if this is their wish.
58. Complete in full the *Young Criminal Justice Act – Waiver of Right to Consult a Person* (E368-2), if a young person wishes to waive their right to contact a parent or other appropriate adult person.

Note: See Appendix B for a copy of form E368-2.

59. Clearly write down the details of a young person's waiver of their right to contact counsel if this is their wish and have the young person sign the waiver.

64. Do not place young persons in a detention cell or secure area of the CBSA facility with any adult.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures for detailed detention guidelines.

Appearance Notice and Notice to Parent or Other Person

69. BSOs will ensure that the agency of jurisdiction (e.g. local police agency) is in agreement with proceeding with the formal court process prior to the officer issuing the Appearance Notice. If the police agency is not in agreement, the agency of jurisdiction can attend and consider other options.
70. If you have issued an Appearance Notice (*Youth Criminal Justice Act* Form 5.1) to a young person, and, if the parent is available, issue a Notice to the parent (*Youth Criminal Justice Act* Form 3.1). Include:
- a) the name of the young person;
 - b) the charge against the young person;
 - c) the time and place of appearance; and
 - d) a statement that the young person has the right to be represented by counsel.

Note: See Appendix C for a copy of Form 3.1 *Youth Criminal Justice Act* and Appendix D for a copy of Form 5.1 *Youth Criminal Justice Act*.

71. If you have issued an Appearance Notice (*Youth Criminal Justice Act* Form 5.1) to a young person, and, a parent is not available but another adult with a legal duty to the young person is available, issue a Notice (*Youth Criminal Justice Act* Form 3.1) to the other adult. Include:
- a) the name of the young person;
 - b) the charge against the young person;
 - c) the time and place of appearance; and
 - d) a statement that the young person has the right to be represented by counsel.

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 3

ARREST AND DETENTION OF YOUNG PERSONS POLICY AND PROCEDURES

Appendix A

YOUTH CRIMINAL JUSTICE ACT DECLARATION OF PRINCIPLE

12/07/11

APPENDIX A

**YOUTH CRIMINAL JUSTICE ACT
 DECLARATION OF PRINCIPLE**

“Policy for Canada with respect to young offenders

3. (1) The following principles apply in this Act:

- (a) the youth criminal justice system is intended to
 - (i) prevent crime by addressing the circumstances underlying a young person's offending behaviour,
 - (ii) rehabilitate young persons who commit offences and reintegrate them into society, and
 - (iii) ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public;
- (b) the criminal justice system for young persons must be separate from that of adults and emphasize the following:
 - (i) rehabilitation and reintegration,
 - (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
 - (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
 - (iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and
 - (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;
- (c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should
 - (i) reinforce respect for societal values,
 - (ii) encourage the repair of harm done to victims and the community,
 - (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and

APPENDIX A

(iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

(d) special considerations apply in respect of proceedings against young persons and, in particular,

(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,

(ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,

(iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and

(iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

(2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

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ARREST AND DETENTION OF YOUNG PERSONS POLICY AND PROCEDURES

Appendix B

SAMPLE YOUTH CRIMINAL JUSTICE ACT – WAIVER OF RIGHT TO CONSULT A PERSON (E368-2)

12/07/11

EN Part 6 Chapter 3

Arrest and Detention of Young Persons

APPENDIX B



YOUTH CRIMINAL JUSTICE ACT WAIVER OF RIGHT TO CONSULT A PERSON

LOI SUR LE SYSTÈME DE JUSTICE PÉNALE POUR LES ADOLESCENTS RENONCIATION AU DROIT DE CONSULTER

Date	Time – Heure
Location – Endroit	

I
Je, _____

residing at
domicilié(e) à _____

born on
né(e) le _____

declare being informed that I am detained concerning
déclare avoir été informé(e) que je suis présentement détenu(e) concernant _____

I have also been informed of my right to consult counsel and a parent. In the absence of my parent, I can consult with any other adult. This other adult may be another relative, or in the absence of a relative, any other adult of my choice, providing that person is not a co-accused or under investigation in respect to the same offence. I am also aware that the person of my choice can be present when I make this statement.

J'ai également été informé(e) que je peux me prévaloir de mon droit de consulter un avocat et un parent. En l'absence d'un parent, je peux consulter toute autre personne adulte. Cet autre adulte peut être une personne apparentée ou, en l'absence d'une telle personne, un autre adulte de mon choix, pourvu que cette personne ne soit pas coaccusée ou ne fasse pas l'objet d'une enquête relative à la même infraction. Je suis également au courant que la personne de mon choix peut être présente lorsque je fais cette déclaration.

I hereby renounce

Par la présente, je renonce à

- ☐ my right to consult counsel;
me prévaloir de mon droit de consulter un avocat;
- ☐ my right to consult my parent or another person;
me prévaloir de mon droit de consulter un parent ou une autre personne;
- ☐ that a person of my choice be present at my statement.
ce qu'une personne de mon choix assiste à la prise de ma déclaration.

Signature	Witnesses – Témoins
_____	_____

E368-2 (06)
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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

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**ARREST AND DETENTION OF YOUNG PERSONS POLICY AND
PROCEDURES**

Appendix C

**FORM 3.1 *YOUTH CRIMINAL JUSTICE ACT* – NOTICE TO PARENT OR
ADULT WITH A LEGAL DUTY TO A YOUNG PERSON**

12/07/11

EN Part 6 Chapter 3

Arrest and Detention of Young Persons

APPENDIX C

Form 3.1
 Subsection 26(1)

In the Youth Justice Court for {district}

NOTICE to a parent or adult with a legal duty to a young person

Canada
 {province / territory, district}

A young person's right to legal counsel. The young person has the right to have a lawyer provided to advise and represent him/her. The young person can hire their own lawyer, can ask Legal Aid for a lawyer, or can ask a Judge in the Youth Justice Court to appoint a lawyer for him/her.

To: {name of responsible adult}

A peace officer has reasonable grounds to believe that {name of young person} broke the law by:

{set out offence(s)}

{name of young person} has a right to be represented by a lawyer in court.

We believe that you are {his / her}:

- ☐ parent
- ☐ legal guardian
- ☐ adult relative {-- specify relationship, if known}, or
- ☐ an adult who knows this young person and is likely to be of assistance to the {him/her}.

This notice is to inform you that {name of young person}:

- ☐ has been arrested regarding the offence(s) and is being detained {place and address}.
- ☐ has received an appearance notice
- ☐ has made a promise to appear
- ☐ has entered into a recognizance
- ☐ has been commanded by summons to appear

{date}

{place}

{name of signator}

{title of signator}

Contact # for further information _____

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 3

**ARREST AND DETENTION OF YOUNG PERSONS POLICY AND
PROCEDURES**

Appendix D

**FORM 5.1 *YOUTH CRIMINAL JUSTICE ACT* – APPEARANCE NOTICE TO A
YOUNG PERSON**

12/07/11

EN Part 6 Chapter 3

Arrest and Detention of Young Persons

APPENDIX D

Form 5.1
Criminal Code
Sections 496, 497

In the Youth Justice Court for {district}

**Appearance Notice by a Peace Officer
To a Young Person not yet charged with an Offence**

Canada
{province / territory, district}

A young person's right to legal counsel The young person has the right to have a lawyer provided to advise and represent him/her. The young person can hire their own lawyer, can ask Legal Aid for a lawyer, or can ask a Judge in the Youth Justice Court to appoint a lawyer for him/her.

To: {name of young person} of {address}

A peace officer has stated that he/she has reasonable grounds to believe that you committed the following offence(s):

{set out offence(s)}

☐ You must go to the Youth Justice Court at {place}, on {date}, at {time} in order to be dealt with according to law.

☐ You must go to {place}, on {date}, at {time} for the purposes of the *Identification of Criminals Act*.
[Ignore if not filled in]

This is to warn you that it is a criminal offence, under subsection 145(5) of the *Criminal Code*, for you to fail to comply with either of these directions, where it applies to you, unless you have a lawful excuse for not going.

{time}

{date}

{place}

{name of peace officer}

{title - peace officer, etc.}

{signature of the peace officer}

{signature of the young person}

12/07/11

CBSA ENFORCEMENT MANUAL

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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 6

PERSONAL SEARCH POLICY AND PROCEDURES

23/02/12

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to detect, detain, arrest, and to conduct personal searches on persons entering Canada suspected of having concealed contraband on or about their person (i.e. body packed, swallowed, within body cavities).

DEFINITIONS

2. Refer to chapter 11 – Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 – allows the designation of areas as customs controlled areas. Section 11.3 – owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
4. Section 98 – provides that a border services officer (BSO) may search any person who the officer suspects on reasonable grounds has goods concealed on or about their person that may contravene the Act, could be evidence of a contravention of the Act, or the importation or exportation of which is prohibited, controlled, or regulated by this or any other act of Parliament. The person has the right to be taken before a senior officer to object to the search. It is up to the senior officer at this point to determine if there are reasonable grounds to conduct a search. Only officers of the same sex as a person may search them and if an officer of the same sex is not available, an officer may authorize any suitable person of the same sex to perform the search. The authority is limited to:
 - a) any person who has arrived in Canada, within a reasonable time after their arrival,
 - b) any person about to leave Canada, at any time prior to their departure, or
 - c) any person who has had access to an area designated for persons leaving Canada and has left the area, but has not left Canada, within a reasonable time after they leave the designated area.

Note: The Supreme Court of Canada has interpreted that Section 98 extends to searches to determine whether goods are concealed within the body.

5. Section 99.2 – authorizes a border services officer to search a person, including prescribed persons or members of a prescribed class of persons, leaving a customs controlled area, if they have reasonable grounds to suspect the person has goods concealed on or about their person that may contravene the act, could be evidence of a contravention of the Act, or the importation or exportation of which is prohibited, controlled, or regulated by this or any other act of Parliament. The person has the right to be taken before a senior officer to object to the search. It is up to the senior officer to determine if there are reasonable grounds to conduct a search. Only officers of the same sex as the person will search them and if an officer of the same sex is not available, an officer may authorize any suitable person of the same sex to perform the search.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

6. Section 15 – authorizes border services officers to search any person, if they have reasonable grounds to suspect that a person has concealed currency or monetary instruments that are greater than the amount prescribed on or about their person and have not reported it. The person has the right to be taken before a senior officer to object to the search. It is up to the senior officer to determine if there are reasonable grounds to conduct a search. Only officers of the same sex as a person may search them and if an officer of the same sex is not available, an officer may authorize any suitable person of the same sex to perform the search. The authority is limited to persons:
 - a) arriving in Canada, within a reasonable time after their arrival,
 - b) about to leave Canada, at any time prior to their departure, or
 - c) who has had access to an area designated for persons leaving Canada and has left the area but has not left Canada, within a reasonable time after they leave the designated area.

The Canadian Charter of Rights and Freedoms

7. Section 8 – states everyone has the right to be secure against unreasonable search or seizure.
8. Section 9 – states everyone has the right not to be arbitrarily detained or imprisoned.
9. Section 10 – states everyone has the right on arrest or detention:
 - a) to be informed promptly of the reasons for arrest or detention;

- b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.
- 10. In *R. v. Simmons*, the Supreme Court of Canada held that for persons entering Canada, the degree of personal privacy reasonably expected at customs is lower than it is in most situations. Searches performed by customs officers are reasonable based on a standard of reasonable grounds to "suspect".
- 11. In the *R. v. Monney* decision, the Supreme Court of Canada re-affirmed the decision of *R. v. Simmons* and held that the authority of section 98 extends to the collection of body wastes. Customs officers have the authority to detain persons for the purposes of collecting samples of bowel movements under monitored conditions where they have reasonable grounds to "suspect" these wastes contain evidence of a contravention.
- 12. The Supreme Court of Canada has divided the types of searches that customs officers perform into three categories based on the *Charter* issues. The categories are as follows:
 - a) The first category of search involves the routine questioning of persons arriving in Canada, the inspection of baggage, pockets, wallets, and purses, and the pat down of outer clothing. The Court viewed these as part of routine processing, which does not raise *Charter* concerns.

Note: See Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to pocket searches for evidence.
 - b) The second category of search is that which involves the removal of clothing (disrobement). Searches of the second category are viewed as detentions that invoke rights such as the right to be informed of the reasons for the detention and the right to retain and instruct counsel. For a category two search, which includes the collection of body wastes, officers must have "reasonable grounds" to suspect that the person has secreted contraband on or about his/her body.
 - c) The third category is that which involves actual physical contact for examination of the body, (i.e., the administration of x-rays, or the probing of body cavities). A third category search must be considered to be, at a minimum, also a detention.

Note: Neither category two or three searches are considered “routine” processes and are deemed to constitute a detention within the meaning of Section 9 of the *Canadian Charter of Rights and Freedoms*.

Criminal Code of Canada

13. Section 2 – defines border services officers as “peace officers” when performing any duty in the administration of the *Customs Act*.
14. Section 25 – states that as “peace officers” border services officers, with reasonable grounds, are justified in using only as much force as is necessary to complete a search.

Note: Refer to Part Six, Chapter Five, Use of Force Policy and Procedures.

15. Section 26 – states that officers who use excessive force are criminally responsible for their actions.

BACKGROUND

- 16.
17. To discover if suspicions of contraband concealed on or about a person are correct, it may be necessary to conduct a personal search. Border services officers have the authority to conduct personal searches in accordance with section 98 of the *Customs Act*.
18. In terms of legal authorities in this regard, in *R. v Monney*, the Supreme Court of Canada ruled that under section 98 of the *Customs Act*, a customs officer may search a traveller, providing the officer suspects on reasonable grounds that contraband has been “secreted on or about his person” and that the search occurs “within a reasonable time” of the person’s arrival in Canada. The phrase “secreted on or about his person” not only refers to prohibited material on or about the surface of a person’s body but also secreted or concealed within their body.

19. The Supreme Court ruling further stated that the actions of the customs officers in detaining Monney in a "drug loo facility" and conducting a "bedpan vigil" amounted to a search within the second of the three categories of border searches established in the *Simmons* case and were reasonable for the purposes of section 8 of the Charter.
20. The Court found that a passive "bedpan vigil" is not as invasive as a body cavity search or medical procedures such as the administration of emetics.

PURPOSE AND SCOPE

21. The purpose of this policy is to guide border services officers in the personal search, including monitored bowel movements and cavity search, of persons suspected of attempting to smuggle contraband.
22. This chapter is an extension of Part Six, Chapter One, Arrest and Detention and Chapter Two, Care and Control of Persons in Custody and must be used in conjunction with them.
23. This policy applies to all border services officers.

POLICY GUIDELINES

Approval

24. After completing all routine customs processing, if a border services officer has reasonable grounds to suspect that a person has secreted contraband on or about their body, they will convey their suspicions to a senior officer.

Note: If border services officers are processing more than one traveller, reasonable grounds must be established for each individual and officers must be able to articulate their suspicions for each individual traveller.

25. Border Services officers must obtain approval from a senior officer to proceed with the detention of a person for a personal search.

Note 1: If border services officers are obtaining approval for more than one traveller, they must obtain this approval for each traveller.

Note 2: A personal search may include a monitored bowel movement. If the search involves monitored bowel movements or a visit to a medical facility, the approval must be in writing.

Contesting Grounds under Section 98

35. When a person requests to speak to a senior officer, or elects to contest the reasonable grounds for a search under section 98, the officer requesting the search will advise a senior officer of the reasonable grounds.

Note: At ports of entry where a senior officer (i.e. superintendent, chief, manager) is not available, border services officers will telephone the closest CBSA office where a senior officer is in charge. Persons will be allowed to talk to the senior officer by telephone.

36. The searching officer will ensure that the person has had the opportunity to verbally advise the senior officer of their objection.
37. When a person talks to a senior officer, the senior officer must deliver a secondary caution.
38. Senior officers will assess reasonable grounds and decide whether the search is to take place. The senior officer reviewing the grounds cannot be the same person who approved the original request to conduct the search. If a second senior officer is not available, one must be contacted by phone.

Note: In a case where a personal search is to be conducted on more than one traveller, the senior officer must hear the objections of any traveller in the group who requests a senior officer, or who contests the search. Reasonable grounds must be reviewed and approved for each traveller on an individual basis.

39. Senior officers who review the grounds for conducting a search must record in their notebook all contact with the suspect person(s), whether or not they approved or denied the personal search and the reasons for their decision.

Officer Health and Safety

40. If a frisk for officer safety has not yet been conducted, prior to entering the search room, immediately after a person has been advised of their rights or as a simultaneous action, a frisk must be performed as a safety precaution for the searching officers. All detainees are to be frisked prior to entering a search room.

Note: Refer to Chapter Six, Part One, Arrest and Detention Policy and Procedures for guidelines on conducting frisks for officer safety.

41. Officers will discontinue personal searches when they find that because of a frisk for officer safety their reasonable grounds for conducting a further personal search have disappeared. For example, if an officer suspected the person of carrying a body pack and the frisk revealed no such pack, the personal search would be discontinued.
42. Officers conducting personal searches will wear protective gloves. Officers may also wear safety glasses and/or masks, if they feel it is necessary (e.g. when the person being searched is suspected of being a carrier of a life threatening virus or a communicable disease).
43. Officers will shield any breaks or lesions on their skin (i.e. with dressings, bandages, barrier creams, etc.) to protect them from contamination.
44. Officers will be especially careful when handling faeces and when they come into contact with bodily secretions such as blood, urine, sputum, vaginal secretions, saliva, and vomit or areas soiled by any of these.
- 45.

Personal Search

Note: An Internal Carriers and Body Packers training course is recommended for all officers and supervisors involved in personal searches.

46. To justify a detention, officers will record in their notebook all reasonable grounds, indicators, and non-verbal and verbal responses, including inculpatory and exculpatory statements relating to a person.

Note: If an incident involves more than one traveller, reasonable grounds, indicators and non-verbal and verbal responses must be recorded for each individual traveller.

47. Officers must get the approval of a senior officer to perform a personal search.
48. Before a person is escorted into a search room, it must be made sterile and devoid of any loose articles.
49. All personal searches are to be conducted by an officer of the same sex as the person being searched.
50. An assisting officer of the same sex as the person must also be present.

Note: Refer to Appendix A, Authorizing Assistance for a Personal Search, for further instructions if two officers of the same sex as the person are not available.

- 51.
52. Officers will ensure that personal searches are conducted in a professional and dignified manner.
53. Officers will politely answer but without elaboration, particularly if an argument may result, when a person asks any questions.
54. Officers may ask a person to remove some or all clothing as is needed to conduct a personal search for contraband. The person is obligated to comply.
55. Officers may ask a person to bend over or squat

Persons may

be asked to spread their buttocks.

56. When illicit contraband is found during a personal search, persons may immediately be placed under arrest, if circumstances warrant, and advised of the reason for the arrest, their right to retain and instruct counsel, and cautioned about making any incriminating statements.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

57. Officers will record the time of the arrest as well as all answers received to the rights and caution statements in their notebook and on the Personal Search/Arrest Report in ICES or for non-automated ports on a paper version of the form.
58. At the time of arrest, even if a person requests to contact counsel, personal searches already underway will be continued until completed. Upon completion of the search, persons must be allowed to contact counsel immediately.
59. At the conclusion of a search, officers will inform the person that the search is complete and, if they are no longer detained or under arrest, that they are free to leave.

Body Packs

67. When body packs are discovered during the course of a frisk, personal search, or at any other time, persons may be placed under arrest immediately, advised of the reason for arrest, their right to retain and instruct counsel, and cautioned.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

68. As deemed necessary for evidentiary purposes, officers may take pictures of persons with body packs in place with their clothes on, in various stages of undress, and entirely disrobed.
- 69.

Vaginal or Anal Inserts

70. When vaginal or anal inserts are discovered during the course of a personal search, persons may be placed under arrest immediately, advised of the reason for arrest, their right to retain and instruct counsel and cautioned about making any incriminating statements. It is recommended that the officers read the reasons for arrest, rights to counsel and cautions directly from their issued notebook insert CE1-1 Officers Reference Booklet.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

71. When vaginal or anal inserts are discovered during a personal search, officers will offer to call medical assistance and proceed to a medical facility, if requested by the person.
72. Under no circumstances will officers attempt to remove any objects from a person's body cavities.
73. Officers may allow persons to remove a vaginal or anal insert themselves, if they can remove the insert without complications and are willing to do so.
74. Officers may transport the person to a medical facility for removal of inserts:
 - a) upon a person's request;
 - b) when a person is unwilling or unable to remove them themselves;

- c) if officers believe that the risk of complications is great; or
- d) to confirm that all inserts have been removed.

Note: Refer to Part 6, Chapter 12 Transporting Persons Under Arrest or Detention.

Monitored Bowel Movements

- 75. Before a person may be detained for the purposes of a monitored bowel movement, all routine CBSA processing must be completed and a personal search conducted to eliminate the possibility that the person is importing contraband on their body, in their baggage, or in their vehicle (where applicable).
- 76. To proceed to a Specimen Isolation Unit (SIU) room or reasonable alternative for monitored bowel movements, a senior officer's approval and one of the following must occur:
 - a) the person admitted to ingesting drugs;
 - b) the person admitted to inserting drugs into a body cavity;
 - c) the officer has formulated by way of indicators the suspicion that the person has ingested drugs and a supervisor has given written approval based on these grounds; or
 - d) the officer has witnessed an orifice with suspect drugs inside.
- 77. Persons detained for the purposes of producing a bowel movement will be re-advised of the right to retain and instruct counsel, their right to be brought before a senior officer and be given as many additional opportunities to contact counsel as is reasonable.
- 78. A person who admits to carrying drugs internally may be placed under arrest, advised of the reason for arrest, advised of their right to retain and instruct counsel and cautioned about making any incriminating statements, but need not be turned over to the police until all evidence is produced.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

- 79. The health and safety of persons suspected of carrying drugs internally will be considered at all times.

80. Medical assistance will be sought immediately at the first sign of illness or whenever a detained person requests medical attention.
81. All persons, regardless of condition, must be advised that medical assistance can and will be made available, if requested or required.
82. Monitored bowel movements will be conducted using an authorized SIU, a portable toilet or in cases where neither of these are available, a secured washroom facility.
83. Public washrooms will not be used as a secured washroom facility.
- 84.
- 85.
- 86.
87. A bowel movement that produces evidence of an offence may result in the immediate arrest of the person.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

Cases of Medical Emergency

88. Persons may experience medical complications as the result of inserting or ingesting drugs or complications caused by other medical conditions. In either case, medical assistance will be sought immediately.
89. When a person's health is in jeopardy, an ambulance will be called and one officer, of the same sex as the person, preferably the searching officer, must accompany the person in the ambulance to the medical facility.
90. Officers will ensure medical facility security is notified when there is a detained person in the facility.
91. Where medical staff determines that the person must stay in hospital, officers will ensure the police are contacted, advised of the particulars, and requested to attend.

92. An officer must stay with persons at all times until they are turned over to the police.
93. Once discharged, persons will be transported back to the CBSA port following the approved policy and procedures.

X-rays, Probing, and Removal

94. The administration of x-rays and the probing of and removal of contraband from body cavities by medical personnel can only be performed when:
 - a) the person voluntarily provides an informed written consent; or
 - b) when they have been arrested and the x-ray/probe/removal is necessary for the health and safety of the person.
95. Officers are to utilize the expertise of qualified medical personnel and obtain their assistance in identifying any obstructions or blockages found while examining an x-ray or conducting a probe.

Note: Refer to Part 6, Chapter 12 Transporting Persons Under Arrest or Detention.

96. Section 98 of the *Customs Act* does not authorize an officer to demand that a traveller submit to an x-ray. To expedite the monitored bowel movement process, the CBSA allows travellers who are detained on suspicion of internally carrying illicit drugs to volunteer to be x-rayed by a medical professional. In order to facilitate this process and to document the traveller's consent to this procedure, the traveller is asked to sign form K-155, *X-ray Consent/Waiver*. Having signed this form, it remains that the individual may withdraw his or her consent at any time prior to the x-ray being taken.
97. Despite the fact that the traveller has volunteered to undergo the x-ray and has consented to allow the medical staff to provide the results to the CBSA, the traveller continues to be lawfully detained during this time. In this respect, CBSA officials continue to have all the same powers and authorities to limit the traveller's liberty and to supervise his or her actions as if the traveller was lawfully detained in a cell at a port of entry.

98.

Medical and Ambulance Fees

100. The CBSA will pay the costs associated with the x-ray examination of a person for purposes of determining, if they have ingested contraband.
101. The person or their health or medical insurance will pay costs for all other medical related expenses except in cases where the person has no cash, credit card or health or medical insurance.
102. In-province residents must provide their health card and medical insurance information to the medical facility for billing of other medical related expenses.
103. For out of province or out of country residents, officers will make all reasonable attempts to have the person pay for their medical attention and/or ambulance fees.
104. The CBSA must accept responsibility for payment to the medical facility when the person (out of province or out of country resident), does not supply a health card, medical insurance card, cash or credit card. In such cases, officers will supply the hospital with their manager's name, address, and phone number for billing purposes.
105. A person's money may be used to purchase medication, only if they grant consent.
106. Officers will advise the attending physician when a person has no coverage or money and medication is prescribed.

Note: In these cases, the physician may choose to dispense hospital medications.

107. Officers will place receipts for medication purchased by a person in a personal belongings envelope for return to them.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody.

ROLES AND RESPONSIBILITIES

Border Services Officers

108. Border services officers are responsible for:

- a) adhering to this policy and procedures;
- b) conducting personal searches, which may include monitored bowel movements, transporting persons to a medical facility, and monitoring cavity searches where and when so directed;
- c) following all necessary health and safety precautions, including ensuring they have the necessary vaccinations; and
- d) assist other officers by clearing search and SIU rooms, preparing evidence bags, protective gloves, and paperwork, and keeping detailed, accurate notes.

Senior officers

109. Senior officers are responsible for:

- a) evaluating the grounds for suspicion for each individual traveller as presented by border services officers and, where warranted, authorizing monitored bowel movements, and transport of persons to a medical facility;
- b) providing guidance and technical assistance to lead and assisting officers;
- c) ensuring search and SIU rooms are available when required;
- d) assisting in the provision of evidence bags, cameras, and protective gloves;
- e) notifying all involved officers when a seizure has commenced;
- f) advising the regional intelligence officer (RIO) and receiving police force when required;
- g) ensuring that the policies and procedures related to personal searches, transporting persons to a medical facility and cavity searches are adhered to by border services officers; and

- h) taking appropriate corrective action on any breaches of the policy.

Regional Intelligence Officers

110. Regional Intelligence Officers are responsible for:

- a) ensuring that current intelligence related to smuggling of contraband is assessed according to the validity and level of risk associated with the smuggling of controlled substances; and
- b) ensuring that lookouts are issued and files containing information on known or suspected drug smugglers are maintained.

Intelligence Directorate and Criminal Investigations Division

111. The Intelligence Directorate and Criminal Investigations Division are responsible for:

- a) developing, modifying, and approving all policies in accordance with court jurisprudence related to the administration of personal searches, including the collection and analysis of body waste, transporting of persons to a medical facility and cavity searches;
- b) ongoing development and support of monitored bowel movement tools and techniques;
- c) ensuring consistent application of the policy in all regions; and
- d) providing functional guidance and training.

PROCEDURES

Personal Search

112. Request the aid of an assisting officer.

113. Ensure the person is under constant observation.

114. Notify the responsible senior officer of the reasons for performing a personal search and obtain approval to proceed.

Note 1: It is recommended that senior officers review the grounds written in the officers' notebook and if they approve the search, they will sign, date, time, and record their badge number underneath the officers noted grounds. Senior officers should also record the person's data in their

notebook, indicate that they authorized the search, and that they agreed with the grounds presented.

Note 2: In cases where more than one traveller is involved, border services officers must notify the senior officer of the reasons for performing a personal search and obtain approval to proceed for each individual traveller.

115. Inform the person that they are being detained for the purposes of a personal search under section 98 of the *Customs Act* (or section 15 of the PCMLTFA) and the reason for the detention. One of the following statements is recommended:

a) For Drugs or other contraband:

"I have reasonable grounds to suspect that you are carrying non-reported goods (or suspected drugs) on or about your person and I am detaining you for the purposes of a personal search as authorized by section 98 of the *Customs Act*."

b) For Currency of Monetary Instruments:

"I have reasonable grounds to suspect that you are carrying non-reported currency or monetary instruments above the prescribed amount on or about your person and I am detaining you for the purposes of a personal search as authorized by section 15 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*."

Note: The Officer's Reference Booklet also contains a version of this statement to ensure it is easily available to on-site officers.

116. Advise the person that they have the right to retain and instruct counsel immediately.

117. Also caution the person to ensure that any statement or admission of guilt made by a person after detention or arrest is admissible evidence in court.

118.

119. Allow the person to contact counsel.

Note: If a call takes place in a closed or private room, the door to the room may be closed only if the person can still be observed (i.e., through a window). If a call takes place in an open room, all officers will maintain an appropriate distance so that the conversation is private and cannot be overheard.

120. At any time when a person has admitted to unlawful conduct and has not been previously cautioned, immediately caution them concerning the making of any further statements.
121. Record in your notebook the person's answers to their rights and cautions, whether they elected to contact counsel, and if counsel was reached. Include the name of counsel and phone number used to contact counsel.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures for detailed guidelines and wording regarding rights and cautions.
122. Direct the assisting officer to clear and make safe the search room.
123. Make a notebook entry of the fact that the search room is clear and if applicable, any findings made while preparing it.
124. Ensure the person reads section 98 of the *Customs Act* (or section 15 of the PCMLTFA) or read section 98 and/or section 15 of the PCMLTFA to the person.
125. Ensure that they understand section 98 (or section 15 of the PCMLTFA). If not, explain section 98 and/or section 15 of the PCMLTFA to them in words they can understand. The officer should take notes of what was explained to the traveller.
126. Upon request, bring the person before a senior officer for a review of the reasonable grounds for the search. The officer reviewing the grounds cannot be the same person who approved the original request to conduct the search.
127. The senior officer must ensure that a secondary caution is provided as follows:

"If you have spoken to any police officer or to anyone, or if any such person has spoken to you in connection with this case, I want it clearly understood that I do not want it to influence you in making any statement."
128. Protective gloves, masks and protective eyewear may be worn, if necessary.
129. Instruct the person to remove all items from his/her pockets.

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Personal Search

130. Document these items in the notebook and later record the information on the personal effects record portion of a Personal Search/Arrest Report form in ICES or, for non-automated ports, complete a paper version of the form. Document the instructions and items removed chronologically.

131.

132.

133.

134.

135.

136. If necessary, instruct the person to bend over and/or squat

Instruct the person to spread the buttocks if necessary.

137. Determine if suspicion still exists for inserted or ingested contraband.

138. If circumstances warrant, arrest persons when contraband is discovered or when they have admitted to concealing contraband and advise them of the reason for the arrest, their right to retain and instruct counsel, and caution them about making any incriminating statements.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

139. If a person is no longer under detention and is not under arrest, inform them that the search is complete and they are free to leave or where concealed goods have been discovered, that their co-operation in completing enforcement action documentation will facilitate their departure from the CBSA area.

140. Advise persons not under detention or arrest that they may get dressed in private.

141. Continue to observe persons under detention or arrest while they dress.

EN Part 6 Chapter 6

Personal Search

Note: Refer to Part Nine, Chapter Three, Statements and Evidence Policy and Procedures.

151. Seize as evidence any clothing such as body suits, leotards, and girdles that were used to conceal the packs.
152. Take detailed notes throughout the process.
153. Note all findings on the Personal Search/Arrest Report form in ICES or for non-automated ports complete a paper version of the form.

Anal or Vaginal Inserts

154. If anal and/or vaginal inserts are found, the person may be arrested.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

155. Advise the senior officer on duty of the discovery of anal and/or vaginal inserts.
156. Offer to contact medical assistance and proceed to a medical facility if requested by the person.
- 157.
- 158.
- 159.
- 160.
161. If at anytime the person encounters problems, call in medical assistance.
162. Once the insert is placed in an evidence bag, note the location on the body from where it was retrieved, properly seal, and mark the bag.

Note: Refer to Part Nine, Chapter Three, Statements and Evidence Policy and Procedures.

163. Take detailed notes throughout the process.

164. Record all findings on a Personal Search/Arrest Report form in ICES or for non-automated ports complete a paper version of the form.

Monitored Bowel Movement

Specimen Isolation Unit

165. Articulate the grounds to the senior officer on duty and request approval to move the person into the SIU room and perform a monitored bowel movement. Senior officers must review the grounds written in the officers' notebook and if they approve the search, they sign, date, time, and record their badge number underneath the officers noted grounds. Senior officers should also record the person's identification information in their notebook, indicate that they authorized the search, and that they agreed with the grounds presented.
166. Ask the assisting officer to prepare the SIU room, make it sterile, and clear the SIU.
167. Upon entering the SIU room, detain or arrest the person for the ingestion of drugs.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

168. Inform the person of the reason for the monitored bowel movement. The following statement is recommended:

"You are being detained (or arrested) on suspicion of having concealed drugs within your body. You have the right to have the validity of this detention reviewed by a court and to be released if the court determines the detention is unlawful. Do you understand? Do you wish to discuss this with a lawyer?"

169. Provide the person with access to a phone if they request to contact counsel.
170. Throughout the proceedings in the SIU room, continue note taking as lead and assisting officers, adding indicators noted during your time in the SIU room to the original list of indicators.
171. Before proceeding further, offer medical assistance and proceed to a medical facility if requested by the person.

172. Throughout the proceedings in the SIU room, regularly ask the person about their physical condition and look for any possible signs of distress or deterioration.
173. Advise the person of the procedures with respect to the SIU itself. For example, where to sit, where you and the assisting officer will be located, where their bowel movement will go, where it will be cleaned, and where the evidence will be placed.
174. Wear protective gloves throughout the time of contact with the person, as direct contact with bodily secretions is expected and there may also be unexpected contact with other bodily fluids.
175. In cases where exposure to bodily fluids has occurred, discard gloves in a secure, lined trash container (peel them off rolling the glove outside in), wash hands, and clean the affected area with disinfectant.
176. Tell the person to indicate to an officer when they are ready to produce a bowel movement.
- 177.
- 178.
179. Turn on the SIU and instruct the person to proceed with the bowel movement.
180. When the person has produced a bowel movement, clean away any faecal matter from the suspected drugs.
181. Place the drugs from the first bowel movement in two separate evidence bags as follows:
 - a) Place one single piece of evidence (pellet, condom, or balloon) in an evidence bag and mark it 1A.
 - b) Place the remainder of the first bowel movement in a second evidence bag and mark it 1B.
182. Advise the senior officer on duty of the production of the evidence.
183. Place further bowel movements in separate bags and mark them sequentially, coinciding with each movement (i.e., the second bowel movement will be placed in an evidence bag and marked 2, the third 3, etc.).

184.

185. Contact the police to make the necessary arrangements for transportation to a Justice of the Peace.

186. Provide the relief officer with a copy of the list of indicators before going off-shift.

187. The relief officer will record new indicators in their notebook and on the previous officer's list of indicators.

188. Treat this list as a piece of evidence. It may be entered as evidence and disclosed to the crown and defence in court proceedings.

189. Upon exiting the SIU room, immediately remove any protective clothing such as masks, and gloves and discard in a secure, lined trash container (peel gloves off by rolling outside in), and wash hands.

190. Once a relief officer enters the SIU room, they now become the seizing officer if any evidence is produced.

191. During the person's stay in the SIU room, offer them food and/or drink at the standard times for breakfast, lunch, and dinner.

Note: Acceptable drinks are water, soft drinks, and fruit juices (excluding prune). Any type of food is acceptable.

Note: Take into consideration the persons' cultural and religious beliefs pertaining to food.

192. Advise them that the CBSA will pay for any food/meals within reason.

Note: The cost of food for the person must not exceed the meal allowance for that particular meal.

Note: Officers are not expected to use their own money. They may use money from petty cash. Receipts are required.

193. Ask if the person has any allergies before obtaining food or drinks.
194. Take detailed notes throughout the process, including all reasonable grounds, a list of all indicators observed (including non-verbal and verbal inculpatory and exculpatory statements and responses), time of contact, detention, arrest, contact of counsel, health checks, attempts at bowel movements, actual bowel movements, eating and drinking, what was consumed, etc.
195. Note all findings on a Personal Search/Arrest Report form in ICES or, for non-automated ports, complete a paper version of the form.

Alternatives to Specimen Isolation Unit

196. Where no SIU is available, use an alternative method to collect the bowel movement such as:
 - a) a hospital-type bedpan;
 - b) a portable toilet; or
 - c) a private washroom where the water has been turned off and all water is drained from the toilet tank. Use a garbage bag over the toilet seat to collect the bowel movement.

Note: Follow all other procedures outlined in the *Specimen Isolation Unit* section of this chapter.

REFERENCES

197. *Customs Act*
R. v. Simmons, Supreme Court of Canada Decision
R. v. Monney, Supreme Court of Canada Decision
Youth Criminal Justice Act
Criminal Code of Canada
Occupational Health and Safety Act
Internal Carriers and Body Packers, Contraband Enforcement Training
ICES User Reference Manual
Public Service Employment Regulations
CBSA Finance and Administration Manual
CBSA Motor Vehicle Operation Policy

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 6

PERSONAL SEARCH POLICY AND PROCEDURES

Appendix A

AUTHORIZING ASSISTANCE FOR A PERSONAL SEARCH

23/02/12

Appendix A

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

5. Section 15 – Authorizes border services officers to search any person:

- a) arriving in Canada, within a reasonable time after their arrival,
- b) about to leave Canada, at any time prior to their departure, or
- c) who has had access to an area designated for persons leaving Canada and has left the area but has not left Canada, within a reasonable time after they leave the designated area,

if they have reasonable grounds to suspect that a person has concealed currency or monetary instruments that are greater than the amount prescribed on or about their person and have not reported it.

Criminal Code of Canada

- 6. Section 2 – Defines border services officers as “peace officers” when performing any duty in the administration of the *Customs Act*.
- 7. Section 25 – states that as “peace officers” border services officers, with reasonable grounds, are justified in using only as much force as is necessary to complete a search.
- 8. Section 26 – States that officers who use excessive force are criminally responsible for their actions.

The Canadian Charter of Rights and Freedoms

- 9. Section 8 – States everyone has the right to be secure against unreasonable search or seizure.
- 10. Section 9 – States everyone has the right not to be arbitrarily detained or imprisoned.
- 11. Section 10 – States everyone has the right on arrest or detention:
 - a) to be informed promptly of the reasons for arrest or detention;
 - b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

PURPOSE AND SCOPE

12. The purpose of this policy is to guide border services officers when another member of the CBSA is not available to assist in a personal search.
13. This policy must be used in conjunction with the following chapters of the Enforcement Manual:
 - a) Part Six, Chapter One, Arrest and Detention;
 - b) Part Six, Chapter Two, Care and Control of Persons in Custody; and
 - c) Part Six, Chapter Six, Personal Search Policy and Procedures.
14. This policy applies to all border services officers.

POLICY GUIDELINES

15. As per Section 98(4) of the *Customs Act*, if there is no border services officer of the same sex at the location at which a personal search is to take place, an officer may authorize any suitable person of the same sex to perform the search.
16. In order of priority by which they are to be contacted, the following is a list of suitable persons to assist a border services officer in a personal search:
 - a) an on duty border services officer from a nearby port of entry;
 - b) an off duty border services officer;
 - c) an employee of the CBSA;
 - d) an employee of the public service;
 - e) a Canadian police officer;
 - f) a Canadian person in a position of authority; or
 - g) a member of the travelling public.

Appendix A

17. If no suitable person is readily available from Canada, the border services officer may request the assistance of United States authorities (i.e., Department of Homeland Security). The United States officer(s) must not carry a firearm when assisting in a personal search in Canada. In addition it must be explained to the United States officers that the personal search will be conducted under the authority of the *Customs Act*.
18. There is no obligation on the part of any person to assist with a personal search.

ROLES AND RESPONSIBILITIES

Border Services Officers

19. Border Services Officers are responsible for:
 - a) adhering to this policy and procedures;
 - b) conducting personal searches;
 - c) following all necessary health and safety precautions; and
 - d) assisting other officers by clearing search rooms, preparing evidence bags, protective gloves, and paperwork, and keeping detailed, accurate notes.

Senior Officers

20. Senior officers are responsible for:
 - a) evaluating the grounds for suspicion as presented by border services officers;
 - b) providing guidance and technical assistance to lead and assisting officers;
 - c) ensuring search rooms are available when required;
 - d) assisting in the provision of evidence bags, cameras, and protective gloves;
 - e) notifying all involved officers when a seizure has commenced;

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 7

***CRIMINAL CODE* OFFENCES POLICY AND PROCEDURES**

10-16-18

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to sanction designated officers to enforce the *Criminal Code* and other federal statutes in accordance with the *Customs Act* and other pertinent Acts of Parliament.

DEFINITIONS

2. See Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Subsection 163.4 (1) – The Minister may designate any officer for the purposes of Part VI.1 of the Act and shall furnish the officer with a certificate of designation.
4. Subsection 163.5 (1) – A designated officer, when at a CBSA office and performing normal duties of an officer or is acting in accordance with section 99.1 has, in relation to a criminal offence under any other Act of Parliament, has the powers and obligations of a peace officer under sections 495 to 497 of the *Criminal Code*, and subsections 495(3) and 497(3) of that Act apply to the designated officer as if they were a peace officer.
5. Subsection 163.5 (2) – A designated officer when at a CBSA office and performing normal duties of an officer or is acting in accordance with section 99.1, has the powers and obligations of a peace officer under sections 254 and 256 of the *Criminal Code* and may, on demanding samples of a person's blood or breath under subsection 254(3) of that Act, require that the person accompany them for the purpose of taking samples.
6. Subsection 163.5 (3) – A designated officer who arrests a person in the exercise of the powers conferred under subsection (1) may detain the person until the person can be placed in the custody of police.
7. Subsection 163.5 (4) – A designated officer may not use any power conferred on them for the enforcement of the *Customs Act* for the sole purpose of looking for evidence of a criminal offence under any other Act of Parliament.

Criminal Code of Canada

8. Section 253 – Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operations of an aircraft or railway equipment or has care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,
 - a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or
 - b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.
9. Subsection 254(2) – Authorizes designated officers to demand a breath sample be taken with an approved screening device if reasonable suspicion exists that a person is operating or has care and control over a conveyance while under the influence of alcohol.
10. Subsection 254(5) – Every one commits an offence that, without reasonable excuse, fails or refuses to comply with a demand made to him by a peace officer under this section.
11. Subsection 495(1) – A designated officer may arrest without warrant:
 - a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
 - b) a person whom he finds committing a criminal offence; or
 - c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.
12. Subsection 495(2) – A designated officer may not arrest a person without a warrant for:
 - a) an indictable offence mentioned in section 553;

Note: See Appendix A for a list of section 553 offences.
 - b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction; or

PURPOSE AND SCOPE

15. The purpose of this policy is to provide guidelines to designated officers for enforcing the *Criminal Code* and other federal statutes.
16. This policy also provides guidelines to non-designated officers for assisting designated officers enforcing the *Criminal Code* and other federal statutes.
17. This chapter is an extension of the Arrest and Detention Policy and Procedures and the Care and Control of Persons in Custody Policy and Procedures and must be used in conjunction with them.

BACKGROUND

18. In May 1998, Bill C-18, An Act to amend the *Customs Act* and the *Criminal Code*, received Royal Assent, and was proclaimed into force on May 1, 2000. The legislation bridged an enforcement gap that previously limited the ability of border services officers to take action when a *Criminal Code* offence was encountered during the course of normal duties.
19. Bill C-18 gives authorization to designated officers at a CBSA office performing normal duties, to arrest without warrant, subject to section 495(2) of the *Criminal Code*, persons whom they believe on reasonable grounds have committed or are in the process of committing a *Criminal Code* or other federal offence. Designated officers are authorized to take enforcement action against all federal offences including impaired driving, kidnapping, stolen property, and outstanding warrants.
20. All border services officers (BSO's) have a first response mandate to identify *Criminal Code* offences. Designated officers have the authority to deal with subjects involved with a *Criminal Code* violation, process them as per standard operating procedures, and refer them to a police agency of jurisdiction. It is important to note, however, border services officers cannot use their authorities under the *Customs Act* for the sole purpose of searching for *Criminal Code* offences. Rather, during the normal course of their duties, officers who encounter *Criminal Code* offences now have the authority to act.

POLICY GUIDELINES

21. The primary responsibility of all border services officers will be the administration and enforcement of the *Customs Act* and its regulations and other government regulations for which they have responsibility.

32. Designated officers will place persons who are lawfully arrested or detained for a criminal offence in a detention facility or hold them in a secure area of the CBSA facility, preferably out of public view. All persons will be observed and monitored carefully until the police agency of jurisdiction assumes custody.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

Note: In situations where the Vehicular Transport of Persons Under Arrest or Detention policy is applied, the subject may be transported to the responding police agency location or an alternate CBSA facility. Refer to the Vehicular Transport of Persons Under Arrest or Detention policy in the EN manual Part 6 Chapter 8 for further information.

33. Designated officers, when arresting young persons, will comply with the arrest policy and procedures for young offenders including use of the specific Notice Upon Arrest and Right to Counsel for Young Offenders that is used by the local police agency of jurisdiction.
34. Designated officers will notify Citizenship and Immigration Canada (CIC) as soon as possible after the arrest of a foreign national. Further, foreign nationals will be advised and allowed to contact the embassy or consulate of their home country in addition to contacting counsel.

Note: Foreign nationals include visitors holding citizenship in another country, including U.S. visitors and U.S. resident aliens, and persons temporarily residing in Canada (e.g. work or student visas, Minister's Permit, etc.)

35. If a border services officer is conducting a customs secondary examination for contraband or if during the course of a customs secondary examination it is determined a person is in violation of any Federal offence, officers will continue customs processing and will notify CIC at the earliest opportunity.
36. If foreign representatives (i.e. diplomats, consular personnel, international organization personnel, and United Nations personnel) are suspected of being involved in any *Criminal Code* offence, officers will follow the policy and procedures for dealing with offences by foreign representatives.
37. Designated officers will apply the law in accordance with on-going jurisprudence and according to the direction of the local Crown Counsel.
38. Designated officers will adopt specific procedures for *Criminal Code* and other federal statute enforcement to be consistent with the enforcement

47. Designated officers will enforce the provisions of the *Criminal Code* dealing with possession of goods obtained by crime.
48. Designated officers may arrest persons they believe have kidnapped/abducted another person in accordance with section 495 of the *Criminal Code*.
49. Designated and non-designated officers will follow specific policy and procedures relating to abducted children.
50. When a designated officer is the arresting officer, they may complete an Appearance Notice (Form 9) to compel the attendance in court of a person who has not yet been charged with an offence and release them when:
 - a) release is authorized under the *Criminal Code*;
 - b) public interest and court appearance are satisfied; and
 - c) the police agency of jurisdiction **will** lay or initiate *Criminal Code* charges but do not respond to the location for the offence.

Note: This will primarily be for cases involving persons who refuse to comply with a designated officer's demand to provide samples of breath into an ASD.

Note: Refer to Appendix B for a sample Appearance Notice (Form 9).
51. If the arresting officer is not available, an Appearance Notice will not be used to release a person. The person must either be:
 - a) held in custody pending the arrival of the police agency of jurisdiction and released by an officer in charge from that agency, in accordance with section 498 of the *Criminal Code*; or
 - b) if the police agency of jurisdiction cannot attend, released and informed that they will be served with a summons to compel their appearance in court issued by the police agency of jurisdiction.
52. Arresting designated officers will complete a Personal Search and Arrest Report (BSF667) in the Integrated Customs Enforcement System (ICES) and a *Criminal Code* Incident Report (E641) for all *Criminal Code* offence arrests. At locations that do not have access to ICES, a copy of the documents must be completed manually.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- c) providing assistance, commensurate with the officer's training and abilities, to designated officers as required; and
- d) abiding by the conditions and procedures set out in the local agreement or Memorandum of Understanding (MOU) negotiated with the police agency of jurisdiction.

Designated Officers

59. Designated officers are responsible for:

- a) enforcing provisions of the *Criminal Code* in accordance with the law;
- b) abiding by the conditions and procedures set out in the local agreement or Memorandums of Understanding (MOU) negotiated with the police agency of jurisdiction; and
- c) reporting *Criminal Code* occurrences using established Agency processes.

Regional Managers and Superintendents

60. Regional Managers and Superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) ensuring officers receive the necessary training, including skills maintenance training, to allow for the retention of designated status;
- c) maintaining accurate records for training and skills maintenance training purposes;
- d) ensuring adequate designated officer coverage per shift and location;
- e) ensuring an authorized and functioning Approved Screening Device (ASD) is readily available at all times so that tests can be conducted immediately, where applicable;
- f) monitoring, identifying, and addressing deficiencies in *Criminal Code* offence enforcement activities;
- g) ensuring adherence to statistical and occurrence reporting processes;

Enforcement Programs Directorate

63. The borders Enforcement Directorate is responsible for:

- a) monitoring program activities and *Criminal Code* occurrence reports;
- b) developing and modifying policies and procedures as required;
- c) developing, modifying, and delivering training as required;
- d) providing guidance and support to the field;
- e) ensuring that a consistent CBSA communications strategy is maintained;
and
- f) negotiating and liaising with other government departments and agencies at the Headquarters level.

PROCEDURES

Note: These procedures are intended to reflect the national scope of the CBSA. Variances to these procedures may be necessary to meet requirements in local police agreements/Memorandum of Understanding (MOU).

Impaired DriversNon-Designated Officers

64. When a non-designated officer has reasonable and probable grounds to believe a person is operating a motor vehicle or vessel, operating or assisting in the operation of an aircraft or railway equipment, or a person has care or control of a motor vehicle, vessel, aircraft, or railway equipment, whether it is in motion or not, is impaired by alcohol or a drug:
- a) Suspend primary questioning as soon as an offence is detected. Advise supervisor/office that a designated officer is required.
 - b) Once a designated officer has been requested, resume and complete customs primary questioning. Turn over control of the interview to the designated officer as soon as possible. Under no circumstances is the driver to be permitted to operate the conveyance beyond this point.
 - c) Make detailed notes about the occurrence.

- d) If no designated officer is available, the non-designated officer will:
 - i) complete any required customs processing;
 - ii) release the person and, to prevent the continuation of the offence, request the driver voluntarily park their vehicle and seek alternate transportation; and
 - iii) if the driver fails to park the vehicle, immediately report the details of the incident to the responding police agency of jurisdiction.

Designated Officers

65. When a designated officer has reasonable and probable grounds to believe a person is operating a motor vehicle or vessel or operating or assisting in the operation of an aircraft or railway equipment, or has care and control of a motor vehicle, vessel, aircraft, or railway equipment, whether it is in motion or not, is committing or has committed within the preceding three hours an offence under section 253:

- a) If at primary, request a replacement PIL officer through the superintendent/office, where applicable.
- b) Request identification from the driver.
- c) To prevent the continuation of the offence, request that the driver get out of the vehicle. Ensure the vehicle is turned off. Under no circumstances is the driver to be permitted to operate the conveyance beyond this point. Should a driver refuse to exit their vehicle, handle them in accordance with use of force training, policy, and procedures.

Note: Refer to Part 6 Chapter 5, Use of Force Policy and Procedures.

- d) Request assistance from another officer to remove or have the vehicle removed from the primary lane.
- e) Separate the driver from any other vehicle passengers and retain the driver's ownership, registration, and car keys.

Note: There will be variances in procedures from region to region, and even from CBSA office to CBSA office as may be indicated in the local police agreement/MOU.

Note: A Secondary Referral (E67) or Report to Warehouse (Y28) should be completed indicating the person's customs declaration.

Note: The order of the following (f, g, and h) is dependent on the local police agreement/MOU. If it is necessary to arrest an individual for impaired driving the arrest will come first, followed by rights and cautions, then the ABAI demand. If no arrest is necessary the ABAI demand will be read followed by the rights and cautions.

Note: Officers must be able to articulate why they arrested an individual, subject to 495(2) of the *Criminal Code*.

- f) To prevent the continuation of the offence and/or secure evidence, arrest, handcuff, and frisk the person in accordance with CBSA policies and procedures.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

- g) Caution the person and read them their right to counsel.
- h) Read the ABAI demand as specified by the police agency of jurisdiction.
- i) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody pending the arrival of the police agency of jurisdiction.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- j) Contact the police agency of jurisdiction to request attendance at the CBSA office.
- k) Record the time the police agency was contacted in your notebook.
- l) Complete a CPIC check on both the subject and vehicle.
- m) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated ports, a copy of the BSF667 must be completed manually.

- iii) if the driver fails to park the vehicle, immediately report the details of the incident to the responding police agency of jurisdiction.

Designated Officers

67. When a designated officer reasonably suspects that a person has alcohol in their body and is operating a motor vehicle or vessel, operating or assisting in the operation of an aircraft or railway equipment, or has care and control of a motor vehicle, vessel, aircraft, or railway equipment whether it is in motion or not, but reasonable and probable grounds do not exist to indicate that an offence under section 253 has been committed:

- a) If at primary request a replacement PIL officer through the superintendent/office, where applicable;
- b) Request identification from the driver;
- c) Request that the person get out of the vehicle to prevent the continuation of the offence. Ensure that the vehicle is turned off. Under no circumstances is the driver to be permitted to operate the conveyance beyond this point. Should a driver refuse to exit their vehicle, handle them in accordance with use of force training, policy, and procedures.

Note: Refer to Part 6, Chapter 5, Use of Force Policy and Procedures.

Note: A Secondary Referral (E67) or Report to Warehouse (Y28) should be completed indicating the persons customs declaration.

- d) Read the ASD demand approved by the police agency of jurisdiction.
- e) Request assistance from another officer to remove or have the vehicle removed from the primary lane. Retain the drivers' ownership, registration, and car keys.
- f) Ensure that the demand is understood.

Note: There may be variances in procedures from region to region, and even from CBSA office to CBSA office as may be indicated in the police agreement/MOU.

- g) If the driver refuses or fails to comply with the demand to provide breath samples refer to 'Processing Drivers who Refuse or Fail to Comply with Breath Demands' which follows.
- h) If there is evidence to suggest that a person has traces of alcohol in their mouth as a result of the recent consumption of alcoholic beverages,

mouth washes, or breath sprays, or the person is smoking, delay the test for the period of time approved by the police agency of jurisdiction.

- i) Administer the ASD test.
- j) If the ASD registers a **"PASS"**, and all customs processes have been concluded allow the driver to proceed.
- k) If the ASD registers a **"WARN"**:
 - i) Request the driver voluntarily park the vehicle and seek alternate transportation.
 - ii) Allow the driver to proceed.
 - iii) Make detailed notes on the ASD reading of the person and complete an incident report on whether or not they elected to seek alternate transportation.
- l) If the ASD registers a **"FAIL"**.

Note: There will be variances in procedures from region to region, and even from CBSA office to CBSA office as may be indicated in the police agreement/MOU.

Note: The order of the following (i, ii, iii) is dependent on the local police agreement/MOU. If it is necessary to arrest an individual for failing the ASD, the arrest will come first, followed by rights and cautions, then the ABAI demand. If arrest is not necessary, the ABAI demand will be read followed by the rights and cautions.

Note: Officers must be able to articulate why they arrested the individual subject to 495(2) of the *Criminal Code*.

- i) To prevent the continuation of an offence and/or secure evidence, arrest (if public interest is not met), handcuff, and frisk the person in accordance with CBSA policy and procedures.

Note: It is strongly recommended that officers of the same sex as the person to be frisked conduct frisks. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to part 6, chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

- ii) Caution the person and read them their right to counsel.
- iii) Read the ABAI demand approved by the police agency of jurisdiction.
- iv) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place the person in custody pending the arrival of the police agency of jurisdiction.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- v) Contact the local police agency of jurisdiction to request attendance at the CBSA office.
- vi) Record in your notebook the time that the police were contacted.
- vii) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated CBSA offices a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- viii) Record the police contact's name, badge number, and response information on the BSF667.
 - ix) Provide the attending police officer with a copy of the BSF667 and have them sign both copies.
 - x) Complete the *Criminal Code* Incident Report (E641).
- Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).
- xi) Complete all other court processing documentation specified in the local agreement/MOU.

Processing Drivers who Refuse or Fail to Comply with Breath Demand

Designated Officers

68. When a designated officer is faced with a driver who refuses or fails to comply with a demand to provide breath samples:

Note: There will be variances in procedures from region to region, and even from CBSA office to CBSA office as may be indicated in the local police agreement/MOU.

Note: In some regions the subject must refuse to a functioning ASD or ABAI instrument in order to gain any conviction in court. Other regions may not have this as a requirement for court purposes.

- a) Advise the driver that if they fail or refuse to provide a sample that they may be charged with a refusal under section 254(5) of the *Criminal Code*.
- b) Read the demand one more time and make note of the driver's words and actions if they continue to refuse or fail to comply.

Note: Officers should indicate to the individual when their "last chance" to provide a sample will be.

- c) Determine if public interest and court appearance would be satisfied if the person were released.
- d) If so, upon consultation with the responding police agency, issue the person with an Appearance Notice and conclude all customs formalities prior to releasing the person.

Note: Refer to Appendix B for a sample Appearance Notice (Form 9).

- e) If public interest and court appearance would not be satisfied if the person were released, arrest the person for refusal or failure to provide a sample, and read them their right to counsel and caution.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- f) Once the person has been provided with the opportunity to exercise their right to counsel, or declined this right, place them in custody pending the arrival of the police agency of jurisdiction or until court appearance and public interest is satisfied.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- g) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated CBSA offices a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- h) Complete the *Criminal Code* Incident Report (E641).

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

- i) Contact the police agency of jurisdiction to initiate criminal charges and the prosecution process.
- j) Record the police contact's name, badge number, and response information on the BSF667.
- k) Provide the attending police officer with a copy of the BSF667 and have them sign both copies.
- l) Conclude all customs formalities prior to transferring custody to the police authorities.

Processing Persons Subject to Outstanding Canadian Warrants

Non-Designated Officers

- 69. When a non-designated officer encounters a person that they suspect of being the subject of an outstanding Canadian warrant:
 - a) Suspend customs processing as soon as there are reasonable grounds to suspect that the person is the subject of an outstanding warrant and take immediate measures to obtain the assistance of a designated officer.
 - b) Once a designated officer has been requested resume and complete customs processing. Turn over control of the warrant processing to the designated officer as soon as possible.

- c) Make detailed notes on observations and indicators used to formulate reasonable grounds to justify suspicions that the person was the subject of an outstanding warrant.
- d) If no designated officer is available, release the person immediately on completion of customs processes and report the details of the incident to the police agency of jurisdiction.

Designated Officers

70. When a designated officer encounters a person that they suspect of being the subject of an outstanding Canadian warrant:

- a) Verify your suspicions via CPIC in accordance with local guidelines. Ensure the warrant has been issued under Federal jurisdiction.
- b) Detain the person, read them their right to counsel, and caution them regarding the making of any statements.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- c) Determine if the originating agency wants the person returned (via CPIC messaging system and the telephone).
- d) If the originating agency does not want the person returned to their jurisdiction and if all customs processing requirements are complete, the person is free to leave.
- e) If the originating agency wishes the person returned, place them under arrest; read them their right to counsel, and caution them regarding the making of any statements.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- f) Handcuff and frisk the person in accordance with CBSA policy and procedures.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

- g) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- h) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated CBSA office a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- i) Record the police contact's name, badge number, and response information on the BSF667.
- j) Provide the attending police officer with one copy of the BSF667 and have them sign both copies.
- k) Complete the *Criminal Code* Incident Report (E641).

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

- l) Make detailed notes about the occurrence.
- m) Conclude all customs formalities prior to releasing the person, evidence, or conveyance to the police authorities.

Processing Persons Suspected of being in Possession of Property Obtained by Crime

Non-Designated Officers

71. When a non-designated officer encounters a person they suspect of being in possession of property obtained by crime:

- f) Advise the person of their right to counsel and caution them regarding the making of statements.

Note: It is strongly recommended that officers of the same sex as the person to be frisked conduct frisks. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

- g) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody pending the arrival of the police.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- h) Contact the police agency of jurisdiction and request attendance at the CBSA office.
- i) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated ports, a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- j) Record the police contact's name, badge number, and response information on the BSF667.
- k) List all personal belongings and additional goods not subject to seizure or detention as evidence on the BSF667.
- l) Complete the *Criminal Code* Incident Report (E641).

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

- m) Seize the goods under the *Customs Act* as well as any evidence required to substantiate the customs offence.

OR

- ii) “ I am arresting you as I believe on reasonable grounds that you are in possession of property obtained by the commission of an offence.”

Note: As section 357 (Bringing into Canada Property Obtained by Crime) is strictly an indictable offence, and there is no mechanism in place for a designated officer to release the subject, use discretion when dealing with items with a relatively low value. The offence may be better handled by utilizing section 354 (Possession of Stolen Property Obtained by Crime).

- c) If limitations exist, determine if public interest and court appearance are satisfied.
- d) If public interest and court are not satisfied (e.g. evidence), place the person under arrest.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- e) Handcuff and frisk the person in accordance with CBSA policy and procedures.
- f) Advise the person of their right to counsel and caution them regarding the making of statements.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

- g) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody pending the arrival of the police.

Note: Although a person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- h) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated ports a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- i) Complete the *Criminal Code* Incident Report (E641).

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

- j) Complete a Form K129 to transfer the goods to the police.

- k) Complete an Evidence Seizure Receipt (E352) listing the seized property and indicate that the goods have been seized under the *Criminal Code*.

Note: Follow procedures as outlined in Part 5, Chapter 3, Criminal Code – Seizure of Evidence and Goods for the processing of goods/evidence and for samples of the Exhibit Control Form (K129) and Evidence Seizure Receipt (E352).

- l) Contact the police agency of jurisdiction to request attendance at the CBSA office.
- m) Have the attending police officer sign the K129.
- n) Maintain copies of all forms for the CBSA office file.
- o) Record the police contact's name, badge number, and response information on the BSF667 (Personal Search and Arrest) window.
- p) Obtain the signature of the receiving officer on the BSF667 when the transfer of the person and their goods has occurred.
- q) Give one copy of the signed BSF667 to the receiving police officer and keep one copy for the CBSA office file.
- r) Conclude all customs formalities prior to releasing the person, goods, evidence, or conveyance to the police authorities.

Processing Persons Suspected of Abduction/Kidnapping.

Custody Orders

74. If a suspected abduction/kidnapping is in relation to a custody order, make every effort to ensure that the custody order is valid and that it reflects the true legal relationship between the parties.

Note: Foreign custody orders are not enforceable in Canada unless a Canadian Court has recognized it or, under the charging guidelines, a Crown Attorney is using it as grounds to lay charges under Section 283 of the *Criminal Code*.

Non-Designated Officers

75. When a non-designated officer has reasonable grounds to believe that a non-resident has abducted/kidnapped another person:
- a) Refer them to Citizenship and Immigration Canada (CIC).
 - b) If an Immigration officer is unavailable, request a designated officer and follow the next steps outlined for non-designated officers who encounter a person they suspect of kidnapping.
76. When a non-designated officer encounters a resident they suspect of kidnapping:
- a) Suspend the interview and tell the person to wait where they are.
 - b) Take immediate measures to obtain the assistance of a designated officer.
 - c) Turn over control of the interview to the designated officer.
 - d) Make detailed notes outlining the indicators that led to the suspicion of the offence of kidnapping.
 - e) If no designated officer is available, release the person and immediately report the details of the incident to the police agency of jurisdiction and to the appropriate *Our Missing Children Program* Regional Coordinator.

Designated Officers

76. When a designated officer has reasonable grounds to believe that a non-resident has abducted/kidnapped another person:

- a) The designated officer may place the suspect under arrest, read them their right to counsel, and caution them regarding the making of statements.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

Note: If the offence is not readily apparent, (i.e. the victim telling the designated officer that they have been abducted), the subjects will be referred to Citizenship and Immigration Canada (CIC). If an immigration officer is not available, contact the on-call immigration officer.

Note: All instances involving foreign custody orders will be referred to CIC for processing.

- b) Handcuff and frisk the person in accordance with use of force policy and procedures.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- c) Notify Citizenship and Immigration Canada immediately.

- d) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody pending the arrival of the police.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: CBSA officers will allow foreign nationals to contact the embassy or consulate of their home country. This is in addition to being allowed to contact counsel.

Note: Foreign nationals include visitors holding citizenship in another country, including U.S. visitors and U.S. resident aliens, and persons temporarily residing in Canada (e.g. work or student visas, Minister's Permit, etc.)

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- e) When the victim of a suspected abduction/kidnapping is present, determine if medical assistance is required and arrange for transport to a medical facility if necessary.

Note: If the police will attend, make arrangements with CIC to furnish you with a completed IMM 421 form. Give this form to the police when they take custody of the person. Consultation between CIC, the responding police agency, and the CBSA will determine the best course of action regarding the abduction.

- f) Contact the police agency of jurisdiction.
 - g) Place the victim in an area away from the suspect and the public and arrange for an assisting officer, preferably of the same sex as the victim, to remain with them.
 - h) Provide the victim with blankets, pillows, water, etc. based on their requests and as seems appropriate to the circumstances.
 - i) Make detailed notes about the occurrence.
 - j) Conclude all customs formalities prior to releasing the person, evidence, or conveyance to the police agency of jurisdiction.
77. When a designated officer has reasonable grounds to believe that a Canadian resident or citizen has abducted/kidnapped another person:
- a) When the victim of a suspected abduction/kidnapping is present, determine if medical assistance is required and arrange for transport to a medical facility if necessary.
 - b) Contact the police agency of jurisdiction to request attendance at the CBSA office.
 - c) Place the victim in an area away from the suspect and the public and arrange for an assisting officer, preferably of the same sex as the victim, to remain with them.
 - d) Arrest the person by stating:

“I am arresting you as I believe on reasonable grounds that you have abducted/kidnapped this person.”
 - f) Read them their right to counsel and caution them regarding the making of statements.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- g) Handcuff and frisk the person in accordance with CBSA policy and procedures.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

- h) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody pending the arrival of the police.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- i) Provide the victim with blankets, pillows, water, etc. based on their requests and as seems appropriate to the circumstances.
- j) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated ports a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- k) Record the police contact's name, badge number, and response information on the BSF667.
- l) Obtain the signature of the receiving police officer on the BSF667 when the transfer of the person and their belongings has occurred.
- m) Give one copy of the signed BSF667 to the receiving police officer and keep one copy for the CBSA office file.
- n) Complete the *Criminal Code* Incident Report (E641).

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

- o) Make detailed notes about the occurrence.

- p) Conclude all customs formalities prior to releasing the person, evidence, or conveyance to the police authorities.

Completion of Appearance Notices (Form 9)

Note: Refer to Appendix B for a sample Appearance Notice (Form 9).

Designated Officer

- 78. When a designated officer believes that court appearance and public interest are satisfied and the police will not be responding but have agreed to proceed with criminal charges:

Note: There may be variances in procedures from region to region, and even from CBSA office to CBSA office as may be indicated in the police agreement/MOU.

- a) Advise the CBSA superintendent and court liaison officer, where applicable, of action and obtain a court date for the first appearance.
- b) Complete the Form 9 Appearance Notice with the following information:
 - i) full name of the accused;
 - ii) substance of the offence;
 - iii) date, time, and place of required court attendance (as per arrangements with the court liaison officer or superintendent); and
 - iv) signature of the accused.

Note: A person's refusal to sign will not invalidate the form.

- c) Give the duplicate copy to the accused person and advise them that they are released and will have to attend court at the specified time and date.
- d) Complete detailed notes on the incident and prepare a comprehensive report for furtherance to the police agency that will be responsible for laying the information and processing the charge.
- e) Give all relevant documentation to the court liaison officer or, where this position does not exist, the superintendent for transfer to the responsible police agency and for scheduling of the officer's court time.

Note: Officers issuing Appearance Notices will be expected to "swear" the information before a Justice or Commissioner of Oaths, within a reasonable time after issuance, that the information contained in the Appearance Notice is true and accurate. Regions should seek assistance from their responding police agency of jurisdiction for direction.

79. Where a designated officer has issued an Appearance Notice to a young person, complete a Form 3.1 – Notice to a parent or adult with a legal duty to a young person.

REFERENCES

80. *Criminal Code*
Customs Act
Canadian Charter of Rights and Freedoms
Canada Customs and Revenue Agency Service Standards
Canada Customs and Revenue Agency Standards of Conduct
D and R Memorandum

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 7

***CRIMINAL CODE* OFFENCES POLICY AND PROCEDURES**

Appendix A

***CRIMINAL CODE* SECTION 553 – LIST OF OFFENCES**

APPENDIX A

List of Offences - Section 553 *Criminal Code*

Section 553 – The jurisdiction of a provincial court judge, or in Nunavut, or a judge of the Nunavut Court of Justice, to try an accused is absolute and does not depend on the consent of the accused where the accused is charged in information

(a) with

- i) theft, other than theft of cattle
- ii) obtaining money or property by false pretences
- iii) unlawfully having in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds obtained by or derived directly or indirectly from the commission in Canada of an offence punishable by indictment or an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment,
- iv) having, by deceit, falsehood or other fraudulent means, defrauded the public or any person, whether ascertained or not, of any property, money or valuable security, or
- v) mischief under subsection 430(4), where the subject of the offence is not a testamentary instrument and the alleged value of the subject-matter of the offence does not exceed five thousand dollars;

(b) with counselling or with conspiracy or attempt to commit or with being an accessory after the fact to the commission of

- i) any offence referred to in paragraph (a) in respect to subject matter and value thereof referred to in that paragraph, or
- ii) any offence referred to in paragraph (c); or

(c) with an offence under

- i) section 201 (keeping gaming or betting house),
- ii) section 202 (betting, pool-selling, book-making, etc.),
- iii) section 203 (placing bets),
- iv) section 206 (lotteries and games of chance),
- v) section 209 (cheating at play),
- vi) section 210 (keeping common bawdy-house),
- vii) (repealed)
- viii) section 393 (fraud in relation to fares),
- viii.i) section 811 (breach of recognizance),
- ix) subsection 733.1(1) (failure to comply with probation order),
- x) paragraph 4(4)(a) of the *Controlled Drugs and Substances Act*, or

APPENDIX C

- xi) subsection 5(4) of the *Controlled Drugs and Substances Act*. R.S., c. C-34, s. 483, 1972, c. 13, 2.40; 1974-75-76, c. 93, s. 62; R.S.C. 1985, c. 27 (1ST Supp.), s. 104; 1992, c.1, s.58; 1994, c.44, s. 57; 1995, c. 22, s.2; 1996, c. 19, s.72; 1997, c.18, s.66; 1999, c. 3, s. 37; 2000, c. 25, s. 4.

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

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CRIMINAL CODE OFFENCES POLICY AND PROCEDURES

Appendix B

FORM 9 – APPEARANCE NOTICE ISSUED BY A PEACE OFFICER TO A PERSON NOT YET CHARGED WITH AN OFFENCE

10-16-18

APPENDIX B

FORM 9

(Section 493)

APPEARANCE NOTICE ISSUED BY A PEACE OFFICER TO A PERSON NOT YET CHARGED WITH AN OFFENCE

Canada, Province of (territorial division).

To A.B., of _____, (occupation):

You are alleged to have committed (*set out substance of offence*).

1. You are required to attend court on day, the day of A.D. at o'clock in the noon, in courtroom No. at court, in the municipality of, and to attend thereafter as required by the court, in order to be dealt with according to law.

2. You are also required to appear on day, the day of A.D., at o'clock in the noon, at (police station), (address), for the purposes of the Identification of Criminals Act. (Ignore if not filled in.)

You are warned that failure to attend court in accordance with this appearance notice is an offence under subsection 145(5) of the *Criminal Code*.

Subsections 145(5) and (6) of the *Criminal Code* state as follows:

(5) Every person who is named in an appearance notice or promise to appear, or in a recognizance entered into before an officer in charge or another peace officer, that has been confirmed by a justice under section 508 and who fails, without lawful excuse, the proof of which lies on the person, to appear at the time and place stated therein, if any, for the purposes of the *Identification of Criminals Act* or to attend court in accordance therewith, is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

(6) For the purposes of subsection (5), it is not a lawful excuse that an appearance notice, promise to appear or recognizance states defectively the substance of the alleged offence."

Section 502 of the *Criminal Code* states as follows:

"502. Where an accused who is required by an appearance notice or promise to appear or by a recognizance entered into before an officer in charge or another peace officer to appear at a time and place stated therein for the purposes of the *Identification of Criminals Act* does not appear at that time and place, a justice may, where the appearance notice, promise to appear or recognizance has been confirmed by a justice under section 508, issue a warrant for the arrest of the accused for the offence with which the accused is charged."

Issued at a.m./p.m. this day of A.D. at

(Signature of peace officer)

(Signature of accused)

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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 7

***CRIMINAL CODE* OFFENCES POLICY AND PROCEDURES**

Appendix C

***CRIMINAL CODE* INCIDENT REPORT (E641) SAMPLE**

EN Part 6 Chapter 7

Criminal Code Offences

APPENDIX C



Canada Border
Services Agency

Agence des services
frontaliers du Canada

CRIMINAL CODE INCIDENT REPORT RAPPORT D'INCIDENTS - INFRACTIONS AU CODE CRIMINEL

Port file no. - N° de dossier du bureau d'entrée

Please forward report upon completion to your Officer Powers Regional Coordinator.
Veuillez transmettre votre rapport complété à votre coordonnateur régional des pouvoirs accrus des agents.

Port - Bureau d'entrée	Region - Région	Date and time of incident (yyyy/mm/dd hh:mm) - Date et heure de l'incident (aaaa/mm/jj hh:mm)
Use of force applied Usage de la force appliqué	<input type="checkbox"/> No - Non <input type="checkbox"/> Yes - Oui	If yes, use of force report no. - Si oui, n° du rapport de l'utilisation de la force

Indicate the type of incident encountered (see definitions on next page)
Indiquer le type d'incident (voir définitions page suivante)

- | | |
|--|--|
| <input type="checkbox"/> Impaired/suspected drinking and driving - Alcool au volant ou conduite avec capacité de conduite altérée soupçonnée | <input type="checkbox"/> Stolen goods/vehicles - Marchandises ou véhicules volés |
| <input type="checkbox"/> Refusal to comply with a breath demand - Refus d'obtempérer à l'ordre de fournir un échantillon d'haléine | <input type="checkbox"/> Assault - Voies de fait |
| <input type="checkbox"/> ASD warns - Avertissement ADA | <input type="checkbox"/> Obstruction - Entrave |
| <input type="checkbox"/> Novice drivers with BAC - Conducteurs débutants avec CAS | <input type="checkbox"/> Other, specify - Autre, spécifiez |
| <input type="checkbox"/> Outstanding warrants - Mandats non exécutés | |
| <input type="checkbox"/> Missing/abducted children - Enfants disparus ou enlevés | |

Responding police agency
Service de police d'intervention

Date and time contacted (yyyy/mm/dd hh:mm) - Date et heure de la communication (aaaa/mm/jj hh:mm)	Date and time of arrival (yyyy/mm/dd hh:mm) - Date et heure de l'arrivée (aaaa/mm/jj hh:mm)
Date - Time - Heure	Date - Time - Heure

Police unable to respond (reason) - Incapacité d'intervention de la police (raison)

Related documentation (K16/E350/Form 9/Warrant file, etc.) - Documents connexes (K16/E350/Formulaire 9/Dossier de mandat, etc.)

Last name - Nom de famille	First name - Prénom
Date of birth (yyyy/mm/dd) - Date de naissance (aaaa/mm/jj)	Sex - Sexe <input type="checkbox"/> Male Masculin <input type="checkbox"/> Female Féminin
Address - Adresse	
Identification type - Type d'identification	Identification no. - Identification n°
Licence plate no. - N° de plaque d'immatriculation	Licence plate origin - Origine de plaque d'immatriculation
Flight no. (if applicable) - N° de vol (s'il y a lieu)	Country of origin - Pays d'origine

Narrative - Exposé des faits

Please provide details of suspected encounter, such as where it was encountered (primary/secondary), number of subjects involved, number of customs officer(s) involved, was/were subject(s) cooperative, etc.
Veuillez fournir les détails entourant la rencontre du suspect, c.-à-d. l'endroit (primaire ou secondaire), le nombre de suspects impliqués, le nombre d'agents des douanes qui ont participé, le suspect a-t-il collaboré, etc.

E541 (04)

EN Part 6 Chapter 7

Criminal Code Offences

APPENDIX C

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Inspector - Inspecteur	Badge no. - N° d'insigne
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Definitions

Impaired/Suspected Drinking and Driving

Encounters with drivers who are suspected of being impaired and where some action has been taken such as :

- Situations where a police service is contacted for follow-up actions, whether or not police were able to attend.
- Drivers who register a **FAIL** on the ASD.
- Asking him/her to park vehicle and find alternate means of transportation.
- Asking that a sober passenger take over driving.

Refusal to provide a breath sample

- Drivers who refuse to comply with the demand for the ABAl breath sample.
- Drivers who refuse to comply with the demand for the ASD breath sample.

ASD Warns

- Drivers register a **WARN** on the approved screening device (ASD).

Novice drivers with BAC:

Novice drivers who demonstrate that they have blood alcohol concentration (BAC). This box should **only** be checked off if this is a provincial *Highway Traffic Act* violation.

Outstanding warrants

System queries (CPIC) which are positive for outstanding Canadian warrants of all kinds issued for the arrest of an individual, whether or not police services are able to respond to the call.

Missing/Abducted Children

All interceptions of abducted/missing children which yield positive results.

Stolen Goods/Vehicles

All goods or vehicles where there are reasonable grounds to believe that they have been stolen.

Assault

Incidents of assault between travellers or assaults against customs officers.

Obstruction

Incidents of willfully obstructing or resisting a customs officer in the execution of his/her duties.

Other

Any incidents encountered whereby a criminal offence has been committed and/or is suspected of having been committed or is in the process of being committed. Please specify the offence (e.g., public disturbance, unlawful assembly).

Définitions

Alcool au volant ou conduite avec capacité de conduite affaiblies soupçonnés

Rencontre avec des conducteurs qui sont soupçonnés de conduite avec capacité de conduite affaiblies et où des mesures ont été prises, telles que :

- Cas où on communique avec un service de police pour des mesures de suivi, que la police ait été en mesure de se rendre sur les lieux ou non.
- Conducteurs qui obtiennent un **ÉCHEC** à l'ADA.
- Demander à la personne de stationner le véhicule et de trouver un autre moyen de transport.
- Demander à un passager à jeun de conduire.

Refus d'obtempérer à l'ordre de fournir un échantillon d'haleine

- Conducteurs qui refusent d'obtempérer à l'ordre de fournir un échantillon d'haleine pour l'ADA.
- Conducteurs qui refusent d'obtempérer à l'ordre de fournir un échantillon d'haleine pour l'ADA.

Avertissement ADA

- Les conducteurs qui obtiennent un **AVERTISSEMENT** de l'appareil de détection approuvé (ADA).

Conducteurs débutants avec CAS :

Les conducteurs débutants qui ont une concentration d'alcool dans le sang (CAS). Cette case doit **uniquement** être cochée s'il s'agit d'une infraction au *Code de la sécurité routière* d'une province.

Mandats non exécutés

Recherche dans le système (CPIC) qui donne un résultat positif relatif à des mandats non exécutés de toutes sortes délivrés au Canada pour l'arrestation d'une personne, que les services de police soient en mesure ou non d'intervenir.

Enfants disparus ou enlevés

Toutes interceptions d'enfants disparus ou enlevés qui donnent des résultats positifs.

Marchandises ou véhicules volés

Tous les cas où il y a des motifs raisonnables de croire que les marchandises ou les véhicules ont été volés.

Voies de fait

Incidents de voies de fait entre voyageurs ou voies de fait sur un agent des douanes.

Entrave

Entrave ou résistance délibérées à l'accomplissement des fonctions d'un agent des douanes.

Autre

Tout incident où une infraction au Code criminel a été commise, ou est soupçonnée d'avoir été commise ou bien qui est en train d'être commise. Veuillez préciser l'infraction (c.-à-d. désordre public, attroupement illégal).

EN Part 6 Chapter 8

Vehicular Transport of Persons
Part I - Guiding Principles

ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 8

VEHICULAR TRANSPORT OF PERSONS UNDER ARREST OR DETENTION

PART I - GUIDING PRINCIPLES

16/01/09

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EN Part 6 Chapter 8

Vehicular Transport of Persons Part I - Guiding Principles

8. Some offices use the assistance of the RCMP, other qualified CBSA personnel or local police to transport arrested/detained persons. In some cases, pursuant to negotiated contracts, commissionaires or security guards transport arrested/detained persons within Canada acting on behalf of certain CBSA programs.
9. In the event that CBSA officers have to perform transport duties they must be qualified to transport arrested or detained persons. All qualified border services officers, criminal investigators, intelligence officers and inland enforcement officers performing transportation functions must maintain certification in Control and Defensive Tactics, CPR and first aid certification.
10. These guidelines should be read in conjunction with other chapters of the following manuals:

Enforcement Manual:

- a) Part 6 Chapter 1 Arrest and Detention;
- b) Part 6 Chapter 2 Care and Control of Persons in Custody;
- c) Part 6 Chapter 3 Arrest and Detention of Young Persons;
- d) Part 6 Chapter 4 Foreign Representatives;
- e) Part 6 Chapter 5 Use of Force Policy and Procedures;
- f) Part 6 Chapter 7 Criminal Code Offences Policy and Procedures; and
- g) Part 9 Chapters 1 and 2, Customs Prosecution Policy and Procedures.

Program and Policy Manuals for CIC/CBSA:

- a) ENF7 Investigations and Arrests;
- b) ENF 10 Removals;
- c) ENF 12 Search, Seizure, Fingerprinting and Photographing; and
- d) ENF20 Detentions.

Regional transport and detention policies

Training guidelines:

- a) Control and Defensive Tactics procedures;
- b) Transportation Control Tactics procedures; and
- c) Enforcement Training Program I, II, III (Investigations, Removals, and Escorts).

POLICY GUIDELINES

General

- 11. Officers must exercise reasonable care for the protection and well-being of themselves and all persons in their custody and are to take precautions that will help ensure that these persons are protected from harm to themselves or from others.
- 12. Officers will not knowingly transport persons requiring urgent medical attention. As is the case with all medical emergencies, medical staff and/or an ambulance must be summoned.
- 13. The physical well being of persons under arrest/detention must be monitored during transit. Officers must call for medical attention (911) if persons report or display symptoms of serious illness (e.g. shortness of breath, loss of consciousness, and/or severe bleeding).

Arrest and detention considerations

14.

15.

Restraints

16.

Notebooks

17. It is mandatory that the officer prepares and retains notes regarding all details of the transport of the arrested or detained person as well as all of their personal effects in accordance with the procedures outlined in the enforcement manuals.

Communication

18. A transportation plan, including contact numbers, planned route, scheduled stops and estimated time of arrival at the destination/CBSA office/detention facility should be completed and given to the designated contact prior to departure. The amount and type of information collected, as it is procedural in nature, will be determined by the program administered.
19. Prior to, during and after transport, officers should remain in regular communication with the designated contact.
20. The ability to maintain contact with the designated contact is essential to the safety of the officer and the person under arrest/detention. Two-way radios and cellular telephones must be charged and functioning properly to ensure the officers ability to stay in communication with the designated contact.

Transport procedures

21. The vehicles used for transporting arrested/detained persons must be in good working order and, when possible, have sufficient fuel for the trip.
22. The vehicle used for transport must be thoroughly searched immediately before and immediately after transporting the person to any location to ensure that there are no objects present that may be used as a weapon against the officer or may present a risk to the person being transported. If applicable, remove or secure and document all objects.
- 23.
24. All transports of arrested/detained persons should be done in secured vehicles wherever possible.
25. Secure all personal belongings during transport.

Escape

34. In the event of escape, qualified officers must:

- a) notify the local police (dial 911);
- b) relay to the police all pertinent information regarding the arrested/detained person;
- c) notify the designated contact and the intended destination/CBSA office/detention facility and designated contact; and
- d) supply the police with copies of identification.

35. Officers must not engage in vehicle pursuits (to follow in their vehicle in order to overtake or chase).

Arrival at destination/CBSA office/detention facility

36. Upon arrival at the destination/CBSA office/detention facility, the officer should inform the designated contact.

37.

38. Once inside the detention facility, arrested/detained persons and their personal belongings must be turned over to the appropriate authority and signed for in accordance with the procedures of the detention facility.

39. Where practicable, documentation must be signed by both the officer and the contact at the destination/CBSA office/detention facility to validate the transfer and a copy retained for the CBSA.

40.

41. Details regarding the arrested/detained person, any personal searches conducted, medical conditions, the officers' names and badge numbers, and all applicable documents must be provided to the appropriate authority at the detention facility. Each region should determine the standard local procedures.

EN Part 6 Chapter 8

Vehicular Transport of Persons
Part II - Appendix _____

16/01/09

7

CBSA ENFORCEMENT MANUAL
Part 8
DOCUMENTATION AND REPORTS
Chapter 1
NOTEBOOKS

2008-04-07

The defence attorney will examine the officer's notes to identify material that could be used to weaken or discredit the testimony or credibility.

10. In addition to scrutiny by Officers of the Court, access to an officer's notebook or portions of the notebook may be granted through provisions of the *Privacy Act*.
11. Under the provisions of the *Privacy Act*, an individual is able to make a request to the *Privacy Act* Coordinator to gain access to that portion of an officer's notebook that relates directly to him or her. Depending on the information contained in the officer's notes, the CBSA *Privacy Act* Coordinator may grant the request, refuse the request or grant the request with sensitive information deleted.
12. The notebook has been developed by the CBSA. It is produced in a form acceptable to the courts by being individually numbered, stitch bound and having the pages numbered sequentially from 1 to 100.
13. The first page contains spaces for the CBSA officer's name, badge number, location, date of the first entry and date of last entry. The second and third pages contain the phonetic alphabet and 10 codes for use when communicating by radio. Pages for commonly used telephone numbers and tariff items have also been included. Each numbered page is lined and has a margin on the left side for the notation of the date and time the entries are made.
14. The notebook contains sensitive information and must be accorded the same security as other protected materials. Wherever possible, completed notebooks should be secured on CBSA premises.
15. The notebook is considered to be property of the Crown and must be returned prior to leaving the CBSA.
16. The notebook is an official CBSA document and may be entered as evidence during court proceedings. Because of this, the information entered into the notebook must relate solely to the officer's duties.
17. The notebook is to contain the details of the officer's personal knowledge of the events occurring immediately before, during, and after the enforcement action, that could be presented during court processes. Generally, there are no objections raised to an officer refreshing his or her memory from their notes, which were made at the time of the occurrence. However, the use of the notebook in court is a privilege that must be granted by the judge or justice.

ROLES AND RESPONSIBILITIES

CBSA Officers

18. CBSA officers are responsible for:

- a) documenting the activities they perform on duty, including occurrences, incidents and enforcement actions, in their notebook;
- b) storing their notebooks in a secure location; and
- c) turning in their notebooks when they leave the CBSA.

CBSA Supervisors

19. CBSA supervisors and superintendents are responsible for:

- a) documenting the activities they perform on duty including, occurrences, incidents and enforcement actions, in their notebook;
- b) storing their notebooks in a secure location;
- c) turning in their notebooks when they leave the CBSA; and
- d) conducting periodic reviews of officers' notebooks.

CBSA Managers/Chiefs

20. CBSA Managers/Chiefs are responsible for:

- a) providing a secure location for the storage of CBSA notebooks and related records;
- b) retrieving all notebooks from a CBSA member when that member leaves the CBSA.
- c) retaining CBSA notebooks and related records as per CBSA policy; and
- d) ensuring compliance with this policy and procedure.

40. Include all pertinent information relating to the actions undertaken, such as:

- a) persons interviewed;
- b) persons associated with the individual;
- c) officers assisting in the interview or examination and what activities they undertook;
- d) officers indirectly involved in the action, (e.g. primary officer or the point officer);
- e) the owner of the conveyance, company, shipment, etc; and
- f) the name, rank and agency of the person to whom the evidence, exhibits and persons were turned over;

41. Fully describe the individual with information that includes:

- a) date of birth and place of birth;
- b) address of the person;
- c) physical appearance, (i.e. height, weight, build, tattoos or other distinguishing marks or characteristics); and
- d) how the individual was dressed;

Note: when making an entry with respect to the individual's dress, officers may include observations of inconsistency or conflict with statements made on employment, resident, destination, and purpose of travel, etc.

- e) whether the individual was cooperative;
- f) statements made by a person, an associate or a witness, whether inculpatory or exculpatory; and
- g) observed mannerisms, behaviour, attitude and actions of the individuals.

42. Document goods discovered during an examination or personal search, including physical description of the goods, where they were found or concealed, how they were packaged, quantity, weight, size, etc.

REFERENCES

Customs Act
Canadian Charter of Rights and Freedoms

CBSA ENFORCEMENT MANUAL

Part 2

ENFORCEMENT PRIORITIES

Chapter 1

ALCOHOL and TOBACCO

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer its responsibilities with respect to alcohol and tobacco products in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Criminal Code* and court jurisprudence.

Note: Hereafter, any reference to alcohol is intended to include spirits, wine and beer. Any reference to tobacco products is intended to include manufactured tobacco or cigars. "Blunts", a combination of tobacco, paper and a flavouring compound are also considered to be a tobacco product.

DEFINITIONS

2. Refer to Part 11- Glossary

AUTHORITIES

Customs Act

3. Section 99 - Stipulates that a CBSA officer has the right to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
4. Paragraph 109.1(1) - Stipulates that every person who fails to comply with any provision of an Act or a regulation designated by the regulations made under paragraph (3) is liable to a penalty of not more than \$25,000, as the Minister may direct.
5. Paragraph 109.2(2) - Stipulates that every person is liable to a penalty equal to double the total of the duties that would be payable on like tobacco products or designated goods released in like condition at the rates of duties applicable to like tobacco products or designated goods at the time the penalty is assessed, or to such lesser amount as the Minister may direct, if the person:
 - a) removes tobacco products or designated goods or causes tobacco products or designated goods to be removed from a customs office, sufferance warehouse, bonded warehouse, or duty free shop in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts, or

- b) sells or uses tobacco products or designated goods designated as ships' stores in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts.
- 6. Section 110 - Stipulates that a CBSA officer may, with reasonable grounds, seize goods involved in a contravention of the *Customs Act* as well as the conveyance used in the contravention.
- 7. Subsection 117(2) - Provides that if spirits, wine, specially denatured alcohol, raw leaf tobacco or tobacco products are seized under this Act, they shall not be returned to the person from whom they were seized or any other person unless they were seized in error.
- 8. Section 118 - Authorizes CBSA officers to release any seized conveyances to the person from whom they were seized or to a person they authorize, on receipt of a sum of money equal to the value of the goods plus the duties and taxes where applicable or such lesser amount as the Minister may direct.
- 9. Paragraph 142.1(1) - Provides that if spirits, wine, raw leaf tobacco or tobacco products are abandoned or forfeited under the *Customs Act*, they may, subject to regulations, be sold, destroyed or otherwise dealt with.
- 10. Section 159 - Stipulates that it is an offence to smuggle or attempt to smuggle any goods subject to duties, or any goods the importation of which is prohibited, controlled, or regulated by or pursuant to this or any other Act of Parliament.
- 11. Section 160 - Stipulates that a person who contravenes certain sections of the *Customs Act*, for example tobacco smuggling, is guilty of an indictable offence or an offence punishable by summary conviction and is liable to a fine and/or imprisonment.

Customs Tariff

- 12. Rates of duty for spirits and tobacco products are listed in Section IV and Section XXI of the *Customs Tariff*.

Excise Act 2001

- 13. Subsection 35(1) of the *Excise Act, 2001* - Stipulates that imported tobacco products or raw leaf are to be packaged in a package that has prescribed information printed on it and to be stamped before it is released under the *Customs Act*, for entry into the duty-paid market.

14. Schedules 1, 2, and 3 of the *Excise Act, 2001* provides rates of duty on tobacco products, additional duty on cigars and rates of special duties on certain manufactured tobacco.
15. Schedules 4, 5, and 6 of the *Excise Act, 2001* provides rates of duty on spirits, special duties on spirits, and duty on wine.

Excise Act

16. Schedule II of the *Excise Act* provides rates of duty on beer and malt liquor.

PURPOSE AND SCOPE

17. The purpose of this policy is to outline the CBSA's position with respect to its role in the detention, determination and disposal of alcohol and tobacco products.
18. This policy applies to all employees of the CBSA and relates to goods entering Canada through any means (e.g. postal, marine, travellers).

POLICY GUIDELINES

19. This policy deals with both personal and commercial seizures.
20. While the *Customs Act* provides for the seizure of all goods and conveyances that have been forfeited, it is not the policy of the CBSA to take seizure action in all cases. It is recognized that not all contraventions of the *Customs Act* or the regulations are intentional on the part of the person who contravenes them. Negligence, carelessness and lack of knowledge on the part of the importer are factors worthy of consideration when deciding whether or not to proceed with a penalty action.
21. When a conveyance is made use of in the importation of intentionally non-reported goods or goods subject to seizure for untrue statements, the conveyance becomes subject to seizure. In cases involving public conveyances, where passengers are discovered with unreported goods, the conveyance is not to be seized. If it is determined that the person in charge of the conveyance is implicated, then the conveyance may be seized.

- a) 40 litres of liquor;
 - b) 25 cases of beer;
 - c) 30 litres of wine with duties and taxes evaded over \$2,000.00;
 - d) 25 cartons of cigarettes;
 - e) 100 cigars; or
 - f) five kilos of loose tobacco.
32. If the seizure involves a commercial importation, apply the appropriate Administrative Monetary Penalty (AMP) in accordance with Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and AMPS.
 33. If the seizure is against a traveller, apply a conveyance penalty as stipulated in Part 5, Chapter 2, Traveller Seizures and Ascertained Forfeitures.
 34. If the seizure involves a commercial importation, do not apply a conveyance penalty unless the vehicle has been modified and used for smuggling.
 35. If a substance such as Betel Nut is found mixed with tobacco, this substance is to be treated as a tobacco product.
 36. To determine the dollar values for tobacco product seizures, CBSA officers are to use the average retail price in the destination province. For example, Ontario marked cigarettes found in British Columbia should be assigned a value consistent with the Ontario market. If there is no indication that the cigarettes will be forwarded, the value for the seizing province will be used. Counterfeit cigarettes should be valued based on this standard.

Disposal of Seized Alcohol and Tobacco Products

37. Paragraph 142.1(1) of the *Customs Act* states that if spirits, specially denatured alcohol, wine, raw leaf tobacco or a tobacco product is abandoned or finally forfeited under this Act, the Minister may sell, destroy or otherwise deal with it. Subject to the regulations, the sale under subsection (1) of:
 - a) spirits or specially denatured alcohol may only be to a spirits licensee;
 - b) wine may only be to a wine licensee; and
 - c) raw leaf tobacco or a tobacco product may only be to a tobacco licensee.

Stamping and Marking of Tobacco Products

38. The *Excise Act, 2001*, requires that imported tobacco products or raw leaf tobacco be packaged in a package that has prescribed information printed on it, and be stamped before it is released under the *Customs Act*, for entry into the duty-paid market.

Note: The following is a link to the *Excise Act, 2001* - Stamping and Marking of Tobacco Products Regulations.

Stamping and Marking Regulations - Excise Act 2001

39. Refer to D memo 18-2-1, *Imported Tobacco Products and the Return of Canadian Manufactured Products*, for procedures regarding importing tobacco products and the return of Canadian manufactured tobacco products.
40. Refer to D memo 18-3-1, *Reporting and Accounting of Excise Duties on Imported Tobacco, Tobacco Products, Wine and Spirits, and Release of Those Goods* for procedures regarding commercial importations of wine, spirits, raw leaf tobacco and tobacco products.
41. For detailed information on the storage, control and disposal of goods, please refer to the Comptrollership Manual, Material Management Volume:

Control of Seized, Detained, Abandoned and Forfeited Goods:

[Policy](#) [Guidelines](#)

Disposal of Seized, Detained, Abandoned and Forfeited Goods:

[Policy](#) [Guidelines](#)

REFERENCES

42. *Customs Act*
Customs Tariff
Excise Act
Excise Act, 2001
 Stamping and Marking of Tobacco Products Regulations
 D memo 18-2-1 *Imported Tobacco Products and the Return of Canadian Manufactured Products*
 D memo 18-3-1 *Reporting and Accounting of Excise Duties on Imported Tobacco, Tobacco Products, Wine and Spirits, and Release Those Goods*

RESPONSIBLE OFFICE

Office of Primary Interest: Borders Enforcement Division

Office of Collateral Interest: Intelligence Development and Field Support
Division

CBSA ENFORCEMENT MANUAL

Part 2

ENFORCEMENT PRIORITIES

Chapter 3

FIREARMS AND WEAPONS

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to control the importation of firearms, weapons and other devices, in order to ensure compliance with Tariff Item No. 9898.00.00, as well as the *Firearms Act* and the *Criminal Code*.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 11 of this Act requires every person arriving in Canada to report to a CBSA officer and to answer truthfully any question asked by the officer in the performance of his or her duties under this Act or any other Act of Parliament.
4. Section 12 requires all goods imported into Canada be reported to the CBSA.
5. Subsection 99(1) authorizes the examination of any goods and conveyances that a CBSA officer suspects on reasonable grounds to contain goods that are in contravention of the Act.
6. Section 101 authorizes the detention of controlled goods that have been imported or are about to be exported. The officer may release the goods once he or she is satisfied that the goods have been dealt with in accordance with this Act, and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods.
7. Section 107 authorizes the disclosure of customs information to certain prescribed persons.
8. Section 110 stipulates that an officer may, on reasonable grounds, seize goods involved in a contravention of the *Customs Act* as well as the conveyance used in the contravention.
9. Section 159 stipulates that it is an offence to smuggle or attempt to smuggle any goods subject to duties, or any goods the importation of which is prohibited, controlled, or regulated by or pursuant to this or any other Act of Parliament.

10. Section 160 stipulates that a person who contravenes specific provisions of the *Customs Act*, for example weapon smuggling, is guilty of an indictable offence and liable to a fine and/or imprisonment or an offence punishable by summary conviction and liable to a fine and/or imprisonment.

Customs Tariff

11. Section 136 stipulates that all goods enumerated or referred to in tariff item no. 9898.00.00 are prohibited entry into Canada. This includes firearms, prohibited weapons, restricted weapons, prohibited devices, prohibited ammunition and components or parts designed exclusively for use in the manufacture of or assembly into automatic firearms.

Firearms Act

12. Section 2 provides definitions of terms used in the *Firearms Act*.
13. Sections 43 through 53 explain the mechanisms and/or restrictions for which a business may export or import a firearm, prohibited weapon, restricted weapon, prohibited device, component or part designed exclusively for use in the manufacture of or assembly into an automatic firearm or prohibited ammunition.

Criminal Code

14. Sections 2 and 84 provide the legal definitions of firearms, weapons, and terms related therein.
15. Section 88(1) states that it is an offence to carry or possess a weapon, an imitation of a weapon, a prohibited device or any ammunition or prohibited ammunition for a purpose dangerous to the public peace or for the purpose of committing an offence.
16. Section 91(1) states that it is an offence to possess a firearm without a licence and a registration certificate.
17. Section 100(1) states that it is an offence to possess a firearm for the purpose of trafficking, knowing that the person is not authorized to do under the *Firearms Act* and any other Act of Parliament.
18. Section 103(1) states that it is an offence to import or export without authorization a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any prohibited ammunition, or any component or part designed exclusively for use in the manufacture of or assembly into an automatic firearm.

19. Section 117.11 states that any question arising as to whether a person is the holder of an authorization, a licence or a registration certificate, the onus is on the accused to prove that the person is the holder of the authorization, licence or registration certificate.

PURPOSE AND SCOPE

20. The purpose of this policy is to guide CBSA officers in the interdiction of prohibited or restricted firearms, weapons, and other devices and outline the appropriate enforcement mechanisms available under the *Customs Act* and other Acts of Parliament.
21. This policy does not cover instructions that determine the admissibility of firearms and weapons and the adequate documentation required. For such instructions refer to D19-13-2 Importing and Exporting Firearms, Weapons, and Devices – *Customs Tariff, Criminal Code, Firearms Act, and Export and Import Permits Act*.
<http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-13-2-eng.html>
22. This policy applies to all CBSA officers in all modes of transportation.

POLICY GUIDELINES

23. Firearms and weapons are high-risk commodities and their interdiction is therefore a CBSA enforcement priority.
24. Prohibited and restricted firearms, weapons, and devices are defined and outlined in D19-13-2 Importing and Exporting Firearms, Weapons, and Devices as well as in the glossary of this manual. D19-13-2 also provides detailed information regarding detention and release procedures.
25. CBSA officers have many tools at their disposal to control the import and export of inadmissible firearms and weapons and must choose the appropriate action, depending on the circumstances.
26. Officers not trained or equipped to use duty firearms are expected to seize and safely handle firearms encountered in the normal course of their duties.
27. Seizure of any undeclared firearm is warranted when the traveller was given the opportunity to declare the firearm by completing a declaration card or by responding to questioning, and did not declare it.

37. A conveyance penalty may be applied to the traveller who has used his/her conveyance to contravene the *Customs Act*. If the conveyance was modified and used for smuggling purposes, there are no terms of release.

Arrest/Prosecution

38. A number of cases involving undeclared weapons or firearms may not involve an arrest and/or subsequent prosecution.
39. When a traveller has been arrested for *Customs Act* offences related to firearms or prohibited weapons, Investigations is to be notified for possible prosecution.
40. Prosecution may be considered pursuant to the *Criminal Code* and/or the *Customs Act*. Investigations will consult local police to decide and determine the best approach according to the circumstances.

Allegation

41. Normally, the allegation for a seizure is "non-report".
42. When seizing a shipment that has been declared as containing toy guns, and where the CBSA officer suspects them to be prohibited replica firearms (i.e. officer believes the importer/exporter had the intention to circumvent the law rather than simply a classification error) the officer should use the allegation "untrue statements". "Non-report" may not be upheld under appeal because the goods were in fact reported.
43. If there is a probability of prosecution, the allegation will be that of "smuggling".

Sources for determining the status of a firearm or weapon

44. For information determining the status of a weapon or firearm and for information on the documentation required, CBSA officers should refer to memorandum D19-13-2 Importing and Exporting Firearms, Weapons, and Devices.

ROLES AND RESPONSIBILITIES

CBSA Officers

45. CBSA officers are responsible for:
 - a) questioning travellers about firearms and weapons;

- b) observing, targeting, selecting, and examining conveyances, baggage, goods, and commercial shipments for firearms and weapons when reported to the CBSA;
- c) detecting and intercepting prescribed materials or devices, such as explosives or firearms and prevent their importation into or transit through Canada;
- d) liaising with the regional intelligence officers and Investigations;
- e) arresting persons attempting to smuggle weapons or firearms into or out of Canada, in accordance with Section 495 of the *Criminal Code*;
- f) being aware of current trends, modus operandi, concealment methods, unusual routings, etc. as they pertain to firearms and weapons and source countries;
- g) awareness, recognition, collection and submission of information valuable for intelligence gathering purposes;
- h) thoroughly reviewing all lookouts, alerts, and targets;
- i) handling exhibits properly and ensuring that adequate custody of the item is maintained;
- j) duly completing all necessary arrest and seizure documentation (including the K153 Significant Seizure Reports and IMS Occurrence reports when appropriate); and
- k) collecting and submitting information and evidence for prosecution and providing it to investigations/police.

CBSA Superintendents

46. CBSA Superintendents are responsible for:

- a) ensuring compliance with these policies and procedures;
- b) providing necessary assistance and support to CBSA officers;
- c) ensuring completion and timely dissemination of reports concerning weapons/firearms and smugglers;
- d) ensuring timely circulation of all intelligence reports, lookouts, alerts, and targets;

- e) ensuring timely contact with Investigations;
- f) sending locally collected intelligence to the Regional Intelligence Officer (RIO); and
- g) taking necessary action when breaches of this policy and/or procedures occur.

Regional Intelligence Officers

47. RIO's are responsible for:

- a) receiving, analyzing, and disseminating intelligence (exercising discretion) in a timely manner on suspected and known weapons smugglers, concealment methods, source countries, etc.;
- b) collecting intelligence information and developing lookouts and alerts;
- c) issuing lookouts and alerts on suspects and known firearms/weapons smuggling related persons, conveyances, shipments, etc.;
- d) providing expertise prior to involvement by another enforcement agency;
- e) maintaining open communication and sharing of information with Investigations, the Royal Canadian Mounted Police (RCMP) and other law enforcement agencies; and
- f) providing notes, reports and other evidence of involvement to Investigations/police in a timely manner and when requested to do so by Investigations/police.

Regional Investigations

48. Regional Investigations is responsible for:

- a) responding to the local CBSA office when contacted after an arrest for a firearms/weapons arrest;
- b) investigating the case, gathering evidence and making a recommendation to the Director of Investigations in the region as to whether or not charges should be laid under the *Customs Act*;

- c) consulting with local police and crown agents as to whether or not charges should be laid under the *Criminal Code* and/or the *Customs Act*; and
- d) liaising with RIO's in gathering of intelligence.

Enforcement Branch

49. The Enforcement Branch is responsible for:

- a) developing, modifying, and approving policies in accordance with the interpretation and application of the *Firearms Act*, the *Criminal Code* and the *Customs Act*;
- b) collecting information and developing intelligence;
- c) issuing lookouts and national alerts to CBSA officers, the US Department of Homeland Security and other foreign agencies on suspected and known firearms/weapons smuggling related persons, conveyances, shipments, etc.;
- d) disseminating lookouts and alerts provided by other countries on suspected and known firearms/weapons smuggling related persons, conveyances, shipments, etc.;
- e) sharing weapon/firearm intelligence with partners; and
- f) providing support to the field.

PROCEDURES

- 50. Ask all non-residents entering Canada, particularly those entering by vehicle from the United States, whether they have in their possession, or in their vehicle, any firearms or other weapons. It is also advisable to ask returning residents, where appropriate, if they have any firearms or other weapons in their possession, or if firearms make up part of their declaration.
- 51. If a traveller has not been specifically questioned about firearms or other weapons, and an undeclared firearm or weapon is subsequently found, do not take seizure action unless there is evidence of intent on the part of the traveller to smuggle the firearm or weapon.
- 52. Be alert to the possibility that a returning resident may have included the value of a firearm or weapon in his or her report but will not have specifically mentioned the firearm or weapon. Before any examination is undertaken,

the traveller should be questioned as to the nature of the goods included in his/her report and if any weapons are being imported. If weapons are reported as the result of such questioning, they are considered declared and are not subject to seizure.

53. Refer to Customs Memorandum D19-13-2 Importing and Exporting Firearms, Weapons, and Devices, for instructions on processing any weapon or firearm that is being properly declared.
54. If the goods are inadmissible but seizure action is unwarranted, the person may arrange for export.
55. If export is not feasible and seizure not warranted, detain inadmissible firearms and weapons:
 - a) advise the person that the goods are restricted or prohibited in Canada;
 - b) advise that the goods will be held for 70 days (40 days detention, plus 30 days in the unclaimed list) after which they will be disposed of; and,
 - c) provide a K24 receipt.
56. Seize improperly declared firearms and weapons if warranted.
57. Ensure that a full description of the firearm or weapon is indicated on the form K19S. The description should include the type of firearm or weapon (e.g., knife, handgun, rifle, shotgun, etc.), the make, model, serial number and calibre of firearms, the type of action (e.g., revolver or pistol in the case of a handgun, semi-automatic, fully automatic, etc.). This information is needed to facilitate future Police Information Retrieval System (PIRS) input and will assist considerably in the subsequent analysis of firearm and weapons seizures and/or for prosecution purposes as evidence.
58. Consider seizing the conveyance if it was used in the contravention (e.g. gun hidden in the trunk of a car) and the goods are for personal use.
59. Consider issuing an Administrative Monetary Penalty Assessment (AMP) if the goods were imported for commercial purposes.
60. Do not offer terms of release for prohibited or restricted firearms or weapons.
61. Offer terms of release for weapons/firearms that are not classified as prohibited or restricted if the person has the required permits. Terms of release equal 25, 40 or 55 per cent of the value for duty, depending on the level of the contravention.
62. When a conveyance seizure is applicable:

- a) offer terms of release for the conveyance of either 50 per cent or 100 per cent of the terms offered for the firearm, depending on the level of contravention, if the firearm is not restricted or prohibited;
- b) offer terms of release for the conveyance of either \$1000 for each firearm for a first contravention, \$2000 per firearm for second contraventions and \$3000 per firearm for third and subsequent contraventions, if the firearm is restricted or prohibited;
- c) offer terms of release of a sum of \$500 per weapon seized if the item is a prohibited weapon other than a firearm (e.g. switchblade knife);
- d) offer terms of release of a sum of \$500 per commodity group seized for prohibited ammunition, prohibited devices (e.g. handgun barrel, silencer, large-capacity magazine, replica firearm) or components or parts designed exclusively for use in manufacturing or assembling automatic firearms; or
- e) offer terms of release for the conveyance in the normal manner applicable to undeclared goods if it is an undeclared rifle and shotgun.

Note: Officers are encouraged to use reasonable discretion when seizing conveyances if the restricted or prohibited weapon is not a firearm (e.g. switchblade knife, *shuriken*, etc.). However, there may be instances where it is preferable to take further deterrent action in addition to seizing the weapon. This may occur in instances where there is evidence of intent on the part of the traveller to smuggle the weapon.

- 63. Even if terms of release are paid, do not release any seized weapon or firearm until all required permits and certificates are provided. Also, do not release if Investigations advises that the weapon or firearm is to be kept as evidence.
- 64. Advise the RIO of any significant seizure of firearms and/or weapons.
- 65. Advise Investigations when the traveller has been placed under arrest.
- 66. When referral criteria are met, it is advisable (based on officer discretion) that the person in question be arrested pursuant to Section 495 of the *Criminal Code* for having contravened Section 159 of the *Customs Act* (smuggling).

Note: See Part 6 Chapter 1, Arrest and Detention.

- 67. Notify the applicable prosecuting agency (CBSA Investigations and/or local police), which will either arrive to take custody of the firearm/weapon and the person or will advise the CBSA officer to release the person.

68. If the traveller is not being arrested but the seizure is being executed nonetheless, inform the traveller that the seizure is a civil action under the *Customs Act*. The fact that criminal charges have not been laid does not affect the seizure of the goods in question.
69. Record in the notebooks the actual time of arrest and the time at which the advice regarding counsel and the caution were provided.
70. Photograph any novel or unique methods of concealment for intelligence and photograph all concealment as evidence for criminal prosecution.
71. Forward copies of photographs and negatives (where possible) with the seizure reports to the RIO. The RIO may send the photographs to the Enforcement Branch for intelligence gathering purposes. Provide the photographs to the Investigator who responded to the port of entry as the photograph will be used as evidence in the prosecution.
72. Complete a K153 Significant Seizure Report if applicable.
73. Be prepared to provide evidence for the Crown and support to the prosecuting agency (CBSA Investigations and/or local police) if the need arises.
74. Where possible, all firearms and weapons that have been seized, detained or held for export are to be sealed in exhibit envelopes (Evidence Bags and Labels — forms R 635 and R 636). The label portion of the envelope should state the officer's initials and badge number, the date, time and place of action, the suspect or owner's name, the appropriate seizure, exhibit or K24 reference number. Firearms and weapons that cannot be placed in exhibit envelopes should be controlled by completing and attaching an E360 Evidence and Seizure Label.
75. Whenever a firearm or weapon is being turned over to prosecuting agency for use as an exhibit in a court proceeding, list the item on form K129, Exhibit Control. The officer receiving the exhibit will sign and date each copy of the form in the space provided. The officer who witnesses the transfer will also initial each copy in the appropriate space. The original of the form should then be attached to the exhibit or the evidence bag; the second copy given to the receiving officer and the third copy should be placed with the Customs file relating to the goods.
76. During criminal proceedings, a form K128 Notice should be attached to the exhibit before it is placed in the evidence bag. This notice serves to alert the judge that the exhibit has been seized under the *Customs Act*. It does not prevent a judge from making an order under the *Criminal Code* and, if such an order is made, it must be complied with. In such instances, a copy

of the court order is to be attached to the seizure file and an additional copy forwarded to the Recourse Directorate.

77. In addition, complete form K127, Notice to Crown Counsel, and attach to the case reports given to the Crown Counsel. This notice explains the provisions of the *Customs Act* in greater detail than the Form K128.
78. For detailed information on the storage, control and disposal of goods, please refer to the Comptrollership Manual, Material Management Volume:

Control of Seized, Detained, Abandoned and Forfeited Goods:
[Policy](#) [Guidelines](#)

Disposal of Seized, Detained, Abandoned and Forfeited Goods:
[Policy](#) [Guidelines](#)

Handling of Firearms

79. To ensure officers own safety, as well as that of others in the area, it is imperative that officers become aware of the various types of firearms that may be encountered and the proper methods of handling them.
80. The CBSA does not require that officers handle firearms. If an officer does not feel comfortable handling firearms, or is unsure as to how to handle a particular firearm, the officer is required to secure the weapon and summon the assistance of someone who is familiar with it.
81. For general guidelines on handling a firearm see Customs Memorandum D19-13-2 at

<http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-13-2-eng.html>

REFERENCES

82. *Customs Act*
Customs Tariff
Criminal Code
Firearms Act
Canada Evidence Act
D19-13-2 Importing and Exporting Firearms and Weapons

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer its responsibilities with respect to jewellery in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff* and the *Excise Tax Act*.

DEFINITIONS

2. Refer to Part 11 – Glossary

AUTHORITIES

Customs Act

3. Sections 48 to 53 - Explain how the value of goods is determined.
4. Section 98 - Stipulates that officers have the authority to search any person who has arrived in Canada, or who is about to leave Canada, if the officer has reasonable grounds.
5. Section 99 - Stipulates that officers have the authority to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
6. Section 101 - Authorizes officers to detain goods, which have been imported, or that are intended for export, until such time that the officers are satisfied that the goods have been dealt with in accordance with the *Customs Act* and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, and any regulations made there under.
7. Paragraph 109.1(1) - Every person who fails to comply with any provision of an Act or a regulation designated by the regulations made under subsection (3) is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct.
8. Section 110 stipulates that an officer may, with reasonable grounds, seize goods involved in a contravention of the *Customs Act* as well as the conveyance used in the contravention.

9. Section 159 - Stipulates that it is an offence to smuggle or attempt to smuggle any goods subject to duties, or any imported goods that are prohibited, controlled, or regulated by or pursuant to this or any other Act of Parliament.
10. Section 160 - Stipulates that a person who contravenes certain sections of the *Customs Act*, for example jewellery smuggling, is guilty of an indictable offence or an offence punishable by summary conviction, and is liable to a fine and/or imprisonment.

Customs Tariff

11. Chapter 71 of section XIV of the *Customs Tariff* gives the harmonized code for natural or cultured pearls; precious or semi-precious stones; precious metals; metals clad with precious metal, and articles thereof; imitation jewellery and coin.
<http://www.cbsa.gc.ca/general/publications/tariff2005/ch71ne.pdf>
12. Chapter 91 of Section XVIII of the *Customs Tariff* gives the harmonized code for clocks and watches, musical instruments, parts and accessories thereof.
<http://www.cbsa.gc.ca/general/publications/tariff2005/ch91ne.pdf>

Excise Tax Act

13. On May 2, 2006, the Minister of Finance tabled a Ways and Means Motion to eliminate tax on goods outlined in sections 5, 5.1 and 5.2 of Schedule 1 to the *Excise Tax Act*. These goods are:
 - a) clocks with a duty paid value or sale price of \$50 or more;
 - b) articles made in whole or in part of natural shells or semi-precious stones;
 - c) jewellery, including diamonds and other precious or semi-precious stones, for personal use or adornment of the person; and
 - d) goldsmiths' and silversmiths' products

Note: The excise tax on these products is eliminated, effective May 2, 2006. The excise tax on watches was eliminated earlier.

14. For more information on the elimination of the Excise Tax on Jewellery products please consult:
<http://www.cra-arc.gc.ca/E/pub/et/etsl60/etsl60-e.html>

PURPOSE AND SCOPE

15. The purpose of this policy is to provide the appropriate methods of determining the value for duty of goods imported or exported in contravention of the *Customs Act*.
16. This policy applies to all employees of the CBSA and relates to jewellery imported to, or exported, from Canada through any means (e.g. postal, marine, travellers).

POLICY GUIDELINES

17. It is the CBSA policy to issue a seizure and offer terms of release when a traveller has contravened the *Customs Act* by not declaring, misdescribing or undervaluing jewellery to evade duties and taxes.
18. It is CBSA policy to issue a Notice of Penalty Assessment (NPA) for commercial contraventions.
19. Jewellery can be seized as evidence pursuant to section 110(3) of the *Customs Act*. In such instances the jewellery will likely be returned to the importer once all of the legal proceedings are complete and the duties and taxes are paid. When a CBSA officer is considering seizing the jewellery as evidence, the Investigation Division must be consulted.

Appraisal

20. The value of the jewellery must be determined to issue an enforcement action, such as a seizure or an Administrative Monetary Penalty (AMP).
21. The primary basis for determining the value for duty is the transaction value method under section 48 of the *Customs Act*. Under this method, the value for duty is based on the receipt or invoice price paid (or payable) for goods, when sold for export to Canada, to a purchaser residing in Canada. Where there is no sale or price paid or payable, section 48 does not apply.
22. In the case of seized jewellery where the transaction value (section 48) cannot be ascertained or the sale was not for export to Canada, a CBSA officer may utilize section 49 to 53 to determine a value for the purposes of establishing the terms of release.

23. In these circumstances, the value for duty will most often be determined under the provisions of section 53 of the *Customs Act*, the residual method. Section 53 allows CBSA officers to arrive at a value for duty, which is consistent with the intent of the valuation legislation. The intent is to ensure that the value determined is fair, neutral, objective and reflects commercial reality.
24. Arriving at a value under section 53 will usually involve obtaining a fair, equitable and commercially realistic appraisal from a Canadian gemologist. The gemologist report may be required as evidence to support a criminal charge by investigators and the gemologist may be required to testify.
25. When a CBSA officer requests an appraisal, the requesting office is responsible for payment. When the RCMP requests an appraisal as a result of a CBSA seizure made by them, they may send the appraisal invoice to the Regional Compliance Verification Unit.
26. CBSA officers must reduce the gemologist's appraised value to reflect various charges included in the value, such as freight and insurance to, and in, Canada; duties and taxes; as well as an amount for profit, costs and general expenses usually associated with the sale of identical or similar goods in Canada (78 percent of the appraised value when imported for resale or 56 percent of the appraised value when imported for personal use). The adjusted consumer price may then be considered the value for duty pursuant to section 53 of the *Customs Act*.
27. For the purpose of making adjustments to a gemologist's appraisal to obtain a value for duty, watches are not included in the definition of jewellery.
28. If the jewellery was not acquired on the current voyage, but perhaps has been in the traveller's family possession abroad for a number of years, old receipts may be used in determining the value for duty.
29. The CBSA recommends that settlers and travellers have an appraisal from a gemologist when importing or travelling with jewellery. Jewellery cannot be listed on a form Y38 Identification of Articles for Temporary Exportation (see the Travellers Processing Manual, Part 6 Chapter 2). Jewellery requires an appraisal report with a signed and dated photograph. Watches with serial numbers may be listed on a Y38.

General

30. Engagement rings and wedding rings may be imported into Canada on a temporary basis without payment of duties when the recipient will subsequently take up permanent residence outside of Canada (see Customs Memorandum D2-1-3).
31. The CBSA assists National Resources Canada (NRCan) in administering certain provisions of the *Export and Import of Rough Diamonds Act*. This act requires that a Kimberley Process Certificate accompany all imports and exports of rough diamonds. Additional information regarding this program is contained in Memorandum D19-6-4, Kimberley Process - Export and Import of Rough Diamonds.
32. Precious and semi-precious gemstones that have been set or mounted are included in group one for the purpose of arriving at a penalty factor for seizure action (see Part 5 Chapter 2 Traveller Seizures and Ascertained Forfeitures).
33. The proper date to use for calculating exchange rates is the one in effect on the date of direct shipment to Canada, and not the date of purchase.
34. Officers should contact the Investigations Division if the value of the jewellery exceeds the prosecution threshold as per Part 9 Chapter 1.
35. For extensive details on determining value, refer to D13 - Valuation of the Customs D-Memoranda (<http://www.cbsa-asfc.gc.ca/menu/D13-e.html>).

ROLES & RESPONSIBILITIES

CBSA Officers

36. CBSA officers are responsible for:
 - a) conducting compliance verification of both travellers and commercial shipments;
 - b) determining the proper enforcement action; and
 - c) determining the value for duty in cases of enforcement actions.

- d) In cases where the prosecution thresholds are met, the Investigation Division or the Regional Intelligence Officer (RIO) should be contacted before the goods or the person(s) are released, to determine if a criminal prosecution, further investigation or further intelligence gathering, is warranted.

Investigators

- 37. Investigators are responsible for reviewing referrals resulting from jewellery seizures to determine whether or not a criminal prosecution should be considered, or whether further investigation is warranted.

Regional Intelligence Officers (RIO)

- 38. Regional Intelligence Officers are responsible for facilitating the exchange of timely information or intelligence concerning individuals and organizations suspected of involvement in the smuggling of jewellery activities.

Investigation Division

- 39. The Investigation Division is responsible for prosecuting all offences under the *Customs Act* and should be contacted immediately whenever there is reason to believe that a seizure may lead to criminal charges based on CBSA prosecution policies.

Intelligence Directorate

- 40. The Intelligence Directorate is responsible for:
 - a) maintaining up-to-date enforcement data; and
 - b) providing operational support and guidance.

PROCEDURES

- 41. When an invoice is presented for the goods (transaction value), the officer should accept the value and should not request an appraisal. If the officer believes the value is low, the details of the import may be referred to Investigations.
- 42. When an officer finds undeclared jewellery or evidence of undervaluation (e.g. second invoice), the officer may take the appropriate enforcement action. In the absence of commercial invoices regarding the goods, the officer must obtain a determination of the value for duty.

EN Part 2 Chapter 5

Jewellery and Watches

Note: For information on appropriate enforcement action please see Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and AMPS as well as Part 5, Chapter 2, Travellers Seizure and Ascertained Forfeiture.

43. If necessary, officers will request an appraisal from a gemologist. In cases involving watches, a recognized jeweller should confirm the authenticity of the watch.
44. Watches are considered a group one item for the purposes of the calculation of terms of release. However watches are not considered jewellery for the purposes of reducing an appraisal value.
45. An officer will reduce the gemologist's appraised value of jewellery (not including watches) by the following amounts:
 - a) when imported for resale, 78 percent of the appraised value; or
 - b) when imported for personal use, 56 per cent of the appraised value.
46. If the gemologist appraises gold and silver items by weight rather than the cost of a similar item in Canada, do not reduce the value.
47. For detailed information on the storage, control and disposal of goods, please refer to the Comptrollership Manual, Material Management Volume:

Control of Seized, Detained, Abandoned and Forfeited Goods:

[Policy](#) [Guidelines](#)

Disposal of Seized, Detained, Abandoned and Forfeited Goods:

[Policy](#) [Guidelines](#)

LEGISLATIVE AND POLICY REFERENCES

48. *Customs Act*
Customs Tariff
Excise Tax Act.
D-Memoranda
Travellers Processing Manual

CBSA ENFORCEMENT MANUAL

Part 3

SELECTION

Chapter 3

REPORTING, QUESTIONING, AND REFERRAL POLICY AND PROCEDURES

2017-10-04

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2017-10-04

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to analyze declaration reports and documentation, ask clarifying and direct questions, and refer persons and goods for further examination.

DEFINITIONS

2. Point of finality: For imported goods, the point of finality respecting a report or accounting is the point in time at which a transporter, importer, exporter, agent or traveller, having been given every reasonable opportunity to make a true and complete report or accounting, makes a report or accounting effectively asserting it to be true and complete. The same holds true for goods that are prohibited, controlled, or regulated by an Act of Parliament.

Note: For information concerning immigration “point of finality” (referred to as end of examination), referrals, and supplementary questioning, refer to Immigration, Refugees and Citizenship Canada (IRCC) [ENF 4 Port of Entry Examinations](#).

3. For additional definitions, refer to CBSA EN Manual Part 11 – Glossary.

AUTHORITIES

Customs Act

4. Section 7.1 – States that any information provided to an officer in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Imports Measures Act* or under any other Act of Parliament that prohibits, controls, or regulates the importation or exportation of goods must be true, accurate, and complete.
5. Subsection 11(1) – States that all persons arriving in Canada shall enter only at a CBSA office designated for that purpose that is open for business and without delay, present themselves to an officer and answer truthfully any questions asked by an officer in the performance of his or her duties under the *Customs Act* or any other Act of Parliament.
6. Subsection 12(1) – States that all goods that are imported must be reported at the nearest CBSA office that is open for business except under certain circumstances or subject to prescribed conditions.

POLICY GUIDELINES

Point of Finality

12. Before releasing or referring persons, goods, or conveyances for secondary examination, officers must reach the point of finality regarding a report or accounting.
13. In most circumstances, if the point of finality has not been reached before an examination, enforcement action taken as a result of a contravention or an offence under the *Customs Act* should not be taken because the transporter, importer, exporter, agent or traveller has not been given a reasonable opportunity to fulfill their reporting or accounting obligations.

Traveller Processing

14. Every person entering Canada is obligated to present themselves to the CBSA and to answer truthfully any questions asked by the officer in the performance of his or her duties under the *Customs Act* or any other Act of Parliament.
15. Persons are also required to make a report of all goods they are importing and to answer truthfully any question asked by an officer with respect to these goods.
16. Travellers are not obligated to answer questions which do not relate to their immigration status, to the goods in their possession, or to the lawful duties of the officer. Officers are authorized to ask questions they believe are relevant to the performance of their duties, including questions that, at times, may appear intrusive to the individual.
17. Before most enforcement action is taken, travellers must be given every reasonable opportunity to make a true and complete report of themselves and the goods they are importing. Once the officer is satisfied that this opportunity has been extended and no further report is forthcoming, the point of finality has been reached.
18. The point of finality is normally reached at primary unless alternate reporting methods are used.

Note: For information concerning point of finality when alternative reporting methods are used, refer to the [People Processing Manual, Part 3 - Trusted Traveller Programs, chapter 1- General Information](#) and the [Standard Operating Procedures for Telephone Reporting Centre](#).

19. Based on the person's report, once the point of finality is reached, the primary officer will decide whether the person may be released directly, must be referred for additional processing (e.g. examination/documentation of reported goods, payment of duties and taxes, etc.), or should be referred for further examination.
20. In some cases, it may not be possible for an officer to reach the point of finality at primary. The point of finality is not reached when there are language/communication problems or if an open or approximate declaration has been provided and the person is referred for examination without further confirmation or elaboration of their report. For example, if a person states that he or she is importing "about" \$250 worth of goods and the officer does not elaborate on the "about" aspect, an enforcement action may not be appropriate if the person subsequently presents receipts totalling \$400.
21. In instances when the point of finality has not been reached at primary, the traveller should be referred to secondary. The reason for referral must be communicated to the secondary officer as per local procedures, either verbally, by telephone or radio, or via the declaration card or referral slip. The secondary officer will take the necessary action to reach the point of finality.
22. Once the point of finality is reached, if a person is found to be in possession of unreported goods, or it is found that the report made was not truthful, enforcement action may be taken against the goods, the person, or both.
23. For the point of finality to be reached, it is not necessary to have a person sign or complete any document regarding their report.

Note: For further details on primary processing, refer to the [People Processing Manual, Part 2, Chapter 1 – Primary Questioning and Immigration Referrals](#).

Additional and Direct Questioning

24. Additional questions to those normally asked at primary and direct questioning techniques may be necessary to either confirm or negate an officer's suspicions.
25. Additional enquiries and direct questioning techniques should not be used as a matter of routine and must be conducted in accordance with the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, the *Privacy Act*, the *Youth Criminal Justice Act*, and CBSA Code of Conduct.

26. If anomalies or indicators of non-compliance form suspicion during primary questioning, officers may ask additional questions to expand on answers received and clarify any irregularities.
27. When necessary to ask, these additional questions may relate, for example, to the purpose of their trip abroad if they are a returning Canadian resident; their occupation or employment status; whether they are travelling alone or with other people; or any other question relevant to the clarification of the indicators present.
28. Where possible, a primary officer's suspicions should be confirmed or negated at primary.
29. When reasonable suspicions are raised, direct questioning techniques can be utilized to confirm or negate these. Questions relating directly to any irregularities noticed by an officer can be asked as soon as they are observed. This technique allows the officer to observe the person's behaviour when responding. If a person is unable to answer any question that, in all likelihood, they should know the answer to, this, in itself, may be an indicator of non-compliance.
30. Officers will begin all direct questioning in a mildly intrusive manner. As the number of indicators increases and the officer's suspicions are confirmed, the intrusiveness of the direct questioning may be intensified.
31. Persons are not, under any circumstances, to be threatened with any form of legal sanction for refusing to answer additional or direct questions.
32. If an individual refuses to answer an additional or direct question, the officer should rephrase the question, move on to another question, or make a decision to allow the individual to continue through the customs process, refer them for additional processing, or refer them for examination based on reasonable suspicions.
33. When additional or direct questions are asked and an enforcement action occurs which results in prosecution of the individual, it will be necessary for the officer to be able to articulate his/her suspicions. To this end, officers must make precise notes of the questions asked of the traveller as well as the answers received. The exact wording of each question, the answer and/or the person's reaction should be noted where possible.
34. Direct questioning techniques may be used during any part of the customs process: primary, secondary, or while roving.

Commercial Processing

Point of Finality at Time of Report

44. Imported shipments must be reported by the person in charge of the conveyance carrying the goods.
45. With the exception of transporters operating under approved alternative cargo reporting procedures (e.g. Customs Self-Assessment (CSA) Program), the point of finality at the time of report is reached upon presentation to the CBSA of fully completed and acceptable cargo reporting documentation (e.g. cargo manifest).

Note: For information concerning cargo reporting, refer to the [Memoranda D3 Transportation Series](#).

46. If the documentation is insufficient or does not provide adequate information to reach the point of finality, it will be returned to the transporter for correction.
47. Examinations will only be performed after the cargo reporting documentation presented provides a clear point of finality.

Point of Finality at Time of Accounting for Release

48. In order to obtain the release of imported commercial goods, an importer or agent must make an interim or final accounting of the goods by presenting all required documents, properly completed, along with all applicable permits, certificates, or other supporting documents.

Note: For information concerning the accounting of commercial goods, refer to the [Memoranda D17 Accounting and Release Procedures Series](#).

49. With respect to accounting for release, the point of finality is reached when an officer, having reviewed and found the documents presented acceptable, has arrived at a point where a decision must be made to either release the shipment or refer it for examination.

Note: There may be situations where goods are released even though an accounting package does not meet all the documentation requirements and is being rejected. However, all the following conditions must exist before the release may be granted:

- a) the reason for rejection concerns matters not related to enforcement (e.g., coding or calculation errors); and

CBSA Superintendents

56. CBSA superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) providing necessary assistance and support to CBSA officers; and
- c) taking the necessary action when breaches of this policy and/or procedures occur.

Programs Branch

57. The Programs Branch is responsible for:

- a) developing, modifying, and approving policies in accordance with the interpretation and application of the *Customs Act*; and
- b) providing guidance to regional personnel.

REFERENCES

Customs Act
People Processing Manual

CBSA ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 3

PERSONAL BAGGAGE, GOODS AND CONVEYANCE EXAMINATION POLICY AND PROCEDURES

15/05/17

EN Part 4 Chapter 3 Personal Baggage, Goods and Conveyance Examination

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to physically examine personal baggage, goods and conveyances upon arrival in and departure from Canada when deemed necessary and in accordance with applicable legislation.
2. All examinations will be conducted in strict adherence to our core values; examinations will be proficient and discrete to the extent possible with respect to clients and their property.

DEFINITIONS

3. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

4. Subsection 2(1) – “goods” for greater certainty, includes conveyances, animals and any document in any form.

Obligation to Answer Questions and Present Goods

5. Section 13 – States that every person who reports goods under section 12 or is stopped by an officer under section 99.1 shall:
 - a) answer truthfully any questions asked by the officer with respect to the goods; and
 - b) if requested by an officer, present the goods, unload the conveyance or open or unpack any package or container that the officer wishes to examine.

Customs Controlled Areas

6. Section 11.2 – Authorizes the designation of areas as customs controlled areas.
7. Section 11.3 – Only persons holding a ministerial authorization or prescribed persons can be allowed by the owner or operator of a facility to gain entry or access to customs controlled areas.

EN Part 4 Chapter 3 Personal Baggage, Goods and Conveyance Examination

16. Subsection 99(3) – Authorizes officers to cause mail that weighs 30 grams or less to be opened in the officer's presence by the person to whom it is addressed, the person who sent it or a person authorized by either of those persons.
17. Section 99.1 – Authorizes officers to stop a person whom the officer has reasonable grounds to suspect has entered Canada without presenting himself or herself in accordance with subsection 11(1) within a reasonable time after the person entered Canada and question that person and examine their imported goods

Note: Examples of when officers might use this power are when monitoring a CBSA office after hours and at alternate reporting stations. This section also gives authorization to the Royal Canadian Mounted Police (RCMP) to deal with persons encountered away from CBSA ports of entry (POE).

18. Sections 111 and 112 – Provide for acquiring and executing a search warrant in order to conduct a customs examination away from a customs area or in places not subject to Customs control.
19. Subsection 115(1) – States officers may make one or more photocopies for evidentiary purposes of any record, book or document that is seized under this Act.

Note: Photocopying documents constitutes a seizure within the meaning of section 8 of the Charter of Rights and Freedoms.

The Canadian Charter of Rights and Freedoms

20. Section 8 – States everyone has the right to be secure against unreasonable search or seizure.
21. In *R. v. Simmons*, the Supreme Court of Canada held that for persons entering Canada the degree of personal privacy reasonably expected at the border is lower than it is in most situations. It held that questioning and searches performed by officers are reasonable based on a standard of reasonable grounds to "suspect" and are considered a legal delay and not a detention. It divided the types of searches that officers perform into three categories based on the Charter issues that these searches raise. The first category of search involves the routine questioning of persons arriving in Canada, the inspection of baggage, pockets, wallets, and purses, and the pat down of the outer layers of clothing. The Court viewed these as part of routine processing, which does not raise *Charter* concerns.

Note: Refer to Part 6, Chapter 6, Personal Search for the second and third category of searches.

EN Part 4 Chapter 3 Personal Baggage, Goods and Conveyance Examination

22. The Supreme Court of Canada in *R. v. Monney* re-affirmed the decision of *R. v. Simmons* and held that the types of searches that customs officers perform are divided into three categories based on the *Charter* issues that these searches raise.
23. In *R. v. Jacoy*, the Supreme Court of Canada held that examinations for the most part are to be conducted systematically and progressively, with increasing intensity as circumstances warrant, which include referrals for examination based on intelligence.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

24. Subsection 12(1) – Requires every person or entity referred to in subsection (3) to report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than CAN\$10,000.
25. Subsection 16(1) – Authorizes officers to stop, board and search any conveyance, examine anything in or on it and open or cause to be opened any package or container in or on it, in order to determine that there are currency or monetary instruments of a value equal to or greater than CAN \$10,000 for the purpose of subsection 12(1) and direct the conveyance to be moved to a customs office or other suitable place for the search, examination or opening.
26. Subsection 16(2) – Authorizes officers to search baggage, examine anything in it and open or cause to be opened any package or container in it, in order to determine that it contains currency or monetary instruments that are of a value equal to or greater than CAN\$10,000 for the purpose of subsection 12(1) and direct that baggage be moved to a customs office or other suitable place for the search, examination or opening.
27. Subsection 17(1) – Authorizes officers to examine any mail that is being imported or exported and open or cause to be opened any such mail that the officer suspects on reasonable grounds contains currency or monetary instruments of a value equal to or greater than CAN\$10,000 for the purpose of subsection 12(1).
28. Subsection 17(2) – Prohibits officers from opening or causing to be opened any mail that weighs 30 grams or less unless the person to whom it is addressed consents or the person who sent it consents or has completed and attached to the mail a label in accordance with article 116 of the *Detailed Regulations* of the Universal Postal Convention.

EN Part 4 Chapter 3 Personal Baggage, Goods and Conveyance Examination

examining areas of baggage and conveyances that do not lend themselves easily to visual inspections.

41. The CBSA will support decisions to tactically reposition at any point in a situation and/or to elicit aid when an officer perceives an undue risk to their safety, that of another officer and/or a member of the general public.
42. Officers will take the necessary preventative measures by wearing appropriate equipment, such as gloves, goggles, breathing masks or other appropriate protective equipment, to protect their health and safety during examinations

General

43. Personal baggage, goods and conveyances will be examined when deemed necessary at their point of entry or departure.
44. Officers will not be deterred from undertaking an examination based on a persons' objections.
45. Where a person appears upset or acts hostile, officers should record details in their notebook such as the person's actions, statements and physical condition. It is also important to record times and names of any witnesses to an incident.
46. Officers may use detection technology equipment and tools, including detector dog teams, to assist them in the examination of personal goods, baggage and conveyances when deemed appropriate.
47. Officers should familiarize themselves with indicators, concealment methods and other related information by reading intelligence bulletins, alerts and other relevant publications available.
48. Persons will normally be allowed to view the examination of their goods baggage and conveyance but will be kept at a safe distance to avoid any intentional or incidental interference with the examination.
49. Officers may require residents of Canada to establish the origin of their goods when they appear new, of foreign origin or there are indicators that the goods are being unlawfully imported.
50. In instances where the officer has established that the goods are of foreign origin (e.g. physical or documentary evidence such as markings, labels, or receipts; statements made by the person; or information received from intelligence sources) and the person is unable to provide proof of domestic

EN Part 4 Chapter 3 Personal Baggage, Goods and Conveyance Examination

Note: Officers must not confuse pocket searches as defined in these policies and procedures with frisks for officer safety as described in Use of Force training and Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

59. Where indicators exist or undeclared or falsely reported goods are discovered, officers are justified in performing searches for evidence in pockets, purses, wallets, envelopes or any other reasonable container to discover evidence in the form of receipts, goods, or references to the goods discovered.
60. Pocket, purse and wallet examinations will only be conducted when in the officer's judgement it is safe to do so (i.e. the person is cooperative).
61. All examinations of pockets, purses and wallets should be carried out with as much discretion and privacy as possible, as they are more personal in nature than baggage examinations.
62. In the case of pocket examinations, coats, jackets and pant pockets should be turned out by the person.
63. Where pockets cannot be turned out as in the case of cargo, hidden, or security pockets, officers may confirm that they are empty by patting the pocket area.

Note: Touching a person to detect undeclared items, other than patting the pocket area, is considered to be part of a personal search and therefore the procedures in Part 6, Chapter 6, Personal Search must be followed (i.e. the person must be under arrest or detention).

64. Where it is operationally viable, these types of examinations will be conducted in the presence of another officer to safeguard against any unwarranted allegations of wrongdoing and for officer safety.

Note: Where possible, an officer of the same sex as the person being examined should conduct searches of pockets, purses and wallets.

65. Where a second officer is not available, officers will not touch a person of the opposite sex but will conduct an examination of purses and wallets and visually inspect those pockets that can be turned out or examined without touching the person (e.g. outside jacket pockets).
66. Officers will record the details of all pocket, purse and wallet examinations in their notebook in order to be ready and able to clearly articulate the reasons for conducting this type of examination.

EN Part 4 Chapter 3 Personal Baggage, Goods and Conveyance Examination

Outer Clothing Examination

67. Under the *R vs Simmons* decision, the Supreme Court of Canada held that for persons entering Canada, the degree of personal privacy reasonably expected at the border is lower than it is in most situations. Searches performed by CBSA officers are reasonable based on a standard of reasonable grounds to "suspect".
68. An officer may ask routine questions of persons entering Canada, inspect baggage, pockets, wallets and purses, and pat down outer clothing. The Court viewed these as routine processing, which does not raise Charter concerns.
69. Outer layers of clothing include items that when removed, could not reasonably be expected to expose the person in a manner considered inappropriate. For example, an officer may request the removal of hats, coats or footwear. The removal of such items must be relative to the suspected offence and not considered to be embarrassing.
70. Such articles as turbans, wigs and religious items will not normally be considered "outer clothing" for the purposes of this section. Officers will not request the removal of these articles as a matter of routine. The removal of these articles, and other similar items, could be considered demeaning to the person wearing them and not without stigma. The removal of such items must be relative to the suspected offence.
71. Searches of outer clothing may involve asking the person to remove the contents of their pockets and, when necessary, the officer patting the outermost layer of clothing to ensure that the pockets are empty and that no additional pockets exist. In addition, the officer may request that an outer layer of clothing be removed.
72. The officer must be able to articulate reasons for advancing a search to this extent.
73. When a person refuses to comply with an officer's request to examine an article of outer clothing for routine purposes (i.e. modesty or culture) the officer will not compel the person to do so.

Note: Where reasonable grounds exist to suspect that the person is concealing unlawfully imported goods "on or about his person", an officer may perform a personal search. Refer to Part 6, Chapter 6, Personal Search Policy and Procedures.

74. Searches of the outer most layer of clothing to uncover evidence should not be contemplated if an officer has health and safety concerns.

EN Part 4 Chapter 3 Personal Baggage, Goods and Conveyance Examination

75. A search of the outer clothing layers and a frisk search for officer safety are not one and the same. Each has its own distinct purpose and legal authorization. It is the responsibility of the officer to determine what type of search /examination is appropriate in each situation and proceed accordingly.
76. Where possible, an officer of the same sex as the person being examined should conduct searches of outer clothing.
77. When requesting the removal of outer clothing layers for examination, officers should take persons to as private a location as the secondary area allows.
78. In the case of jackets and coats, officers must question persons to ensure that they are wearing appropriate clothing under the outer layer prior to requesting its removal.
79. Officers will record the details of all outer clothing examinations in their notebook in order to be ready and able to clearly articulate the reasons for conducting this type of examination.

Mandatory Referral Examinations

80. Persons referred to secondary for mandatory reasons, such as duty payment or form completion, will not have their baggage, goods or conveyance examined as a matter of routine.

Selective Referral Examinations

81. Examinations as a result of a selective referral may be more comprehensive than a cursory examination of baggage, goods and conveyances.
82. Examinations should include a methodical inspection of all baggage.
- 83.

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not possible or not practical, the superintendent is to be notified of the examination and results as soon as possible.

91. Officers must have reasonable grounds and must be able to clearly articulate such grounds before cutting, drilling, and/or dismantling is undertaken during an examination.
92. Officers must keep detailed notebook entries of intensive examinations as they may be required to state the reasonable grounds more precisely than for lower intensity examinations.

Examination of Personal Papers and Journals

93. Personal papers and journals will not be reviewed unless there is reason to believe that the papers or journals contain receipts for goods, refer to the acquisition of the goods or may afford evidence of an offence.
94. Officers will only examine personal papers such as private correspondence and journals when it is substantiated that there has been a contravention of the Customs Act.

Note: "Examining personal papers and journals" for evidence contained therein and "reading personal papers or journals" are not one and the same.

95. Officers will not normally open letters or packages addressed to/from a lawyer's office to/from individuals or entities that clearly contain only documents, as the documents are potentially privileged.
96. Solicitor/client privilege applies to any record of confidential communication between lawyers and clients where legal advice or assistance was sought, provided or otherwise involved. Documents, electronic or otherwise, which are protected by solicitor/client privilege, are to be treated with sensitivity. The privilege includes information gathered to formulate legal advice, such as lawyer's working papers, memos and files. This privilege applies to clients. Lawyers carrying these communications are duty-bound to protect confidentiality and must assert this privilege on the client's behalf.
97. Documents may be retained and copied as evidence of a contravention if they are clearly not subject to solicitor-client privilege (e.g., invoices). Where there is a suggestion of any degree the documents are subject to privilege, the documents should be sealed and either returned or sealed in an evidence bag **without being examined or read** and set aside for review by a court for confirmation of privilege.
98. Packages containing passports may be examined as these are not considered documents subject to solicitor-client privilege.

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99. Unreported, falsely reported or illicit goods discovered within letters or packages between lawyers' offices and individuals or entities may be removed and dealt with in accordance with seizure and Administrative Monetary Penalty System (AMPS) policies.

Note: additional information on the examination of solicitor/client privileged information is contained in the Immigration, Refugee and Citizenship Canada [ENF 12 Search, Seizure, Fingerprinting and Photographing](#), and in [ENPart 4, Chapter 12 Postal Examination](#).

Photocopying and Electronic Scanning of Personal Papers and Journals

100. Under no circumstances are documents of any nature unrelated to the administration or enforcement of the *Customs Act* to be photocopied unless they are seized for some other purpose under lawful authority, or permission to photocopy the document is received from the owner or person in possession of the document. For example, personal identification of persons entering Canada may not be photocopied and passed to the police for intelligence purposes. In all instances, individuals are to be advised when documents are photocopied.
101. Officers will photocopy or electronically scan only those passages of records, books, documents or items of relevance to a contravention.
102. If documents are found that are believed to be related to seized goods, officers will photocopy or electronically scan the pertinent portions and certify them as being true copies of the originals, provided that the copies are clearly legible and the officer is satisfied the matter will not result in the prosecution of a person. Otherwise, the originals will be held.
103. If the original documents are held, officers will provide the person with a receipt (Form E352 – Evidence Seizure Receipt) and photocopies of the original documents, and advise them the originals will be returned when the case is finalized.

Note: If copying facilities are not available, officers will advise the person that copies will be provided as soon as possible.

Examination Damages

104. Officers will take photographs before and after examinations when it is likely there will be a complaint as a result of conducting an examination, there is pre-existing damage, they suspect that damage may be caused as the result of an examination or they are going to dismantle or remove

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permanent fixtures or parts, or drill, cut or break an item to determine if it is concealing goods.

Note: Photographs taken prior to examination will record any existing damage. Photographs taken after examination will document the extent of the damage caused, if any.

105. Examining officers will photograph any unexpected accidental damage to personal baggage, goods or conveyances resulting from an examination.
106. In cases of pre-existing damage or when damage is caused by an examination, officers will record all of the relevant information in their notebook.
107. When an examination causes damage, officers will prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent and its suspected or actual cause.

Examination Related Costs

108. The CBSA may pay for affected goods to be brought back to their original state or will make monetary amends when damages have occurred as a result of an examination that is non-resultant.
109. The CBSA will not normally pay for damages to baggage, goods or conveyances when they are or have been used in contravention of and seized under the Customs Act. Goods seized by the CBSA belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter 19, Finance Volume, Comptrollership Manual.

ROLES AND RESPONSIBILITIES

CBSA Officers

110. CBSA officers are responsible for:
 - a) adhering to this and any related policy and procedures; and
 - b) maintaining in safe and good working order all contraband detection equipment used in examinations.

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CBSA Port of Entry Managers and Superintendents

111. CBSA port of entry managers and superintendents are responsible for:

- a) ensuring that the policy and procedures relative to the examination of personal baggage, goods and conveyances are adhered to at their port;
- b) providing direction and support to officers; and
- c) taking appropriate corrective action on policy and procedure breaches.

CBSA Enforcement and Intelligence Programs Directorate

112. CBSA Enforcement and Intelligence is responsible for:

- a) developing, modifying, and approving policies related to the Enforcement and Intelligence Program;
- b) monitoring adherence with Enforcement and Intelligence policy; and
- c) providing guidance to regional operations on intelligence related issues such as current trends and concealment methods.

Programs Branch - Traveller Programs Directorate

113. Traveller Programs Directorate is responsible for:

- a) developing, implementing, modifying and approving all policies and procedures related to the examination of personal baggage, goods and conveyances;
- b) monitoring adherence to this policy and procedures by the regions; and
- c) providing guidance and support to the regions on the examination of personal baggage, goods and conveyances as required.

PROCEDURES

General

114. Before conducting an examination, officers should confirm the existing primary report and ask all persons what goods make up the value reported. For example, if a person has reported \$100 worth of goods after an absence of 48 hours, it would be appropriate to ask the following:

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"You have reported that you were absent from Canada for 48 hours and that you are importing goods worth \$100. What are the goods that you are importing and what are their individual values?"

115. Ask the person(s) to identify their baggage, if they are aware of the contents and if they packed it themselves.

116. Ask the person(s) to place any suitcases, packages or containers on the secondary counter and to open them.

Note: In the case of baggage, it will suffice to have a person present, unlock, unzip or unclasp their suitcase(s) for examination. The officer will then remove what clothing or goods are necessary for the examination.

117. Take any necessary health and safety precautions (i.e. wearing of gloves, goggles, masks etc.).

118. Conduct a thorough, methodical and proficient examination of any baggage, goods and conveyance based on the level of intensity dictated by the referral and any indicators that have been observed.

119. Ask persons clarifying questions, if necessary.

120. Watch for reactions and listen to any comments made by involved persons.

121. Arrest and remove any person from the area who you have reasonable grounds to believe is intentionally obstructing or hindering an examination.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

122. When the officer is satisfied that the goods and conveyance match the persons' report, the officer will advise the person(s) that they are free to leave or where they must go to complete further processing. The traveller is responsible for re-packing his luggage. As a common courtesy, the officer should offer to assist travellers with the re-packing of bags once the contents have been inspected.

123. Progressively intensify the level of examination when indicators exist that lead to reasonable grounds to suspect that baggage, goods or a conveyance contains contraband, undeclared, or falsely reported goods or when contraband, undeclared or falsely reported goods or evidence is discovered.

124. In cases where undeclared goods are discovered, continue the examination until satisfied that all undeclared goods and evidence have been found.

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125. Where an intensive examination is required, examine all compartments in the conveyance,

126. Utilize detection technology equipment (e.g., Ionscan, X-ray, probe, etc.) and any other appropriate equipment and tools (i.e., mirrors, screwdrivers, ratchets, etc.) to verify or negate suspicions.

Note: Refer to Part 4, Chapter 1, Detection Equipment Policy and Procedures.

127. If available, utilize detector dog teams to verify or negate suspicions.

Note: Refer to Part 4, Chapter 1, Detection Equipment Policy and Procedures and the Detector Dog Service Operations Manual.

128. Immediately and discreetly take steps to ensure control is maintained over the goods, conveyance and any persons involved, and alert the superintendent if you suspect or discover the presence of illicit contraband or that some other serious infraction is being committed.

129. If officers discover illicit contraband commodities, they will immediately arrest, advise and caution any suspect(s) that are present.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

130. Remove any involved persons from the area when illicit contraband is found, a conveyance is seized or a person is placed under arrest.

131. Notify the shift superintendent of the removal of persons from the normal stream of traffic.

132. Superintendents will take appropriate steps to provide any assistance that may be required.

133. Should the examination result in a seizure or enforcement action that falls within the threshold for referral for prosecution, the officer or Superintendent will ensure that Investigations is advised and that all pertinent details are included in the referral.

Note: Refer to Part 9, Chapter 1, CBSA Prosecution Policy.

134. Record the details of intensive, resultant or unusual examinations in your notebook.

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135. Complete in full an ICES Examination Report and if necessary, an ORS report and, where applicable, forward it to the responsible Regional Intelligence Officer and/or Targeter for all intensive examinations and examinations conducted as the result of a lookout or target.

Note: For non-automated ports, the examination report must be completed manually.

Land Border

136. Advise the driver of the vehicle to turn off the ignition and remove the keys.
137. Request all occupants exit the vehicle and to remove all loose money, wallets and purses from the vehicle. Direct all occupants to stand at a reasonable distance where they can still be observed and can observe the examination until the examination is complete.
138. Ensure the examination area is safe including the positioning of the conveyance and that it cannot be moved during examination.
139. Officer safety is of the utmost importance when conducting a detailed examination, and as such, officers should limit the depth of their examination to which they are trained to carry out.
140. Officers must be aware of safety considerations for the conveyance owner and of potential liabilities should they attempt to dismantle and subsequently attempt to re-install certain parts of the vehicle that their training pertaining to examination policies does not support.
141. The CBSA may be liable for damage caused to vehicles during examinations. If damage occurs, superintendents will follow the steps laid out in the Comptrollership Manual - Finance Volume Chapter 19: Claims and Ex-Gratia Payments.
142. Ask the driver to remove any suitcases, packages or containers from the vehicle, including the trunk, place them on the secondary counter, and open them.
143. Where a random referral examination is undertaken, conduct a systematic and methodical search of the conveyance including:

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Note: Refer to Appendix A - Passenger Vehicle Examination Requirements. For examinations of marine pleasure crafts, refer to Part 4, Chapter 9, Marine Pleasure Craft Examinations.

144. Where additional indicators are observed, officers may consider examining additional areas of the conveyance including (but not limited to) the following:

Note: For reference, refer to Appendix A- Passenger Vehicle Examination Requirements

145. For health and safety reasons, officers will not dismantle the following items:

- a. gas tanks
- b. airbag assemblies
- c. mechanical or electrical systems
- d. electric or hybrid vehicle batteries and components
- e. parts of the vehicle under pressure (i.e. shocks, springs, air conditioning systems, radiator systems, air or hydraulic systems, tailgate lifts or any other pressurized cylinders).

146. When there are reasonable grounds to suspect that goods are concealed within a conveyance, the superintendent may approve that a qualified person (i.e. licensed mechanic) dismantle the conveyance. An officer must always be present when dismantling and subsequent re-installation is being conducted by a licenced mechanic.

147. Officers must record indicators that led to the dismantling of the vehicle, as well as details pertaining to the further examination assisted by the

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mechanic in their notebooks. Photos should be taken throughout the examination for evidence purposes.

148. Any fees incurred due to the licensed mechanic and/or towing company are the responsibility of the CBSA.

Note: Detention of a traveller may also be necessary. Refer to Part 6, Chapter 1, Arrest and Detention, for information on detention procedures.

149. Obtain ignition keys from the driver as soon as you suspect that a conveyance will be seized.
150. When employing the services of a detector dog team, ensure only the dog and handler are in and around the conveyance unless the handler requests the assistance of another officer.
151. If a detector dog team is used in the examination of a motorhome and an occupant insists on being present, they may be permitted as long as it is safe to do so and they do not interfere with the search and stay out of the way of the dog and handler.

Recreational Vehicles

152. To prevent allegations of theft or misconduct while examining recreational vehicles such as trailers and motorhomes, officers may allow one of the occupants to observe the interior examination and, when necessary and deemed safe to do so, assist in opening compartments.
153. When examining a recreational vehicle with none of the occupants present, it is highly recommended that two officers conduct the examination. Where this is not possible, the examining officer will document in their notebook the circumstances surrounding the examination.
154. If there is concern for the safety of the officer examining a recreational vehicle, an assisting officer should be present. If the assistance of another officer cannot be secured, the examining officer may request that all persons wait outside the vehicle.

Pocket, Purse, and Wallet Examinations

155. Secure baggage and conveyance (where applicable).
156. Separate travelling companions and request another officer watch them closely to ensure that they do not destroy or discard evidence and do not communicate with one another.

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157. Escort the person to a private area.

158. Whenever possible, request the assistance of another officer.

Note: It is recommended that officers of the same sex as the traveller conduct pocket, purse and wallet examinations.

159. Ask the person to empty the contents of their pockets, purse, and/or wallet onto a counter or table.

160. Ask the person to count their currency out loud and note the information in your notebook. Be cognisant of other people in the immediate vicinity who may be able to hear such discussions.

161. Ask the person to turn out their coat, jacket and trouser pockets.

162. Examine pockets, purse, wallet and the contents.

163. Officers may confirm that pockets that cannot be turned out (i.e. cargo, hidden or security pockets) are empty by patting the pocket area.

164. If required, ask the person to lift their feet and display the bottom of their shoes.

165. Record the details of the pocket, purse and wallet examination in your notebook.

Outer Clothing Examination

166. Take the person to as private a location as possible within secondary.

167. Ask the person to remove the outer layer of clothing (i.e. hat, jacket, coat, shoes or boots) that is to be examined.

168. In the case of jackets and coats, ensure that the person is appropriately clothed underneath the item in question prior to requesting its removal.

169. Enter the details of the outer clothing examination in your notebook.

REFERENCES

170. Customs Act
The Canadian Charter of Rights and Freedoms
Comptrollership Manual
Detector Dog Service Manual

CBSA ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 9

MARINE PLEASURE CRAFT EXAMINATION POLICY AND PROCEDURES

15/05/17

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of marine pleasure craft in accordance with the provisions set out in the Customs Act and in recognition of the requirement for safety aboard and around marine pleasure craft.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 allows the designation of areas as customs controlled areas.
4. Section 11.3 allows owners or operators of customs controlled areas to grant access to authorized or prescribed persons only.
5. Section 13 stipulates that every person reporting goods under section 12 of the Customs Act is obligated to answer truthfully questions asked with respect to the goods and present the goods, remove any covering, unload any conveyance and open or unpack any package or container that an officer wishes to examine.
6. Section 99 (1)(a) authorizes officers to examine goods and any containers or conveyance that may contain goods upon importation up to the time of release.
7. Section 99 (1)(c) authorizes officers to examine any goods that have been reported under Section 95, at any time up to the time of exportation.

Note: These provisions include the authority to examine in-transit marine pleasure craft that have docked in Canada and the baggage of their passengers, regardless of the reason for docking.

8. Section 99 (1)(f) authorizes the stopping and boarding of any conveyance, and the examination of any goods and conveyance that an officer suspects on reasonable grounds contains goods that are in contravention of the Act.

Note: This reference pertains to situations where a conveyance has been released and an officer wishes to examine it or where a conveyance is being exported and no goods have been reported under section 95.

9. Section 99.1 allows officers, who on reasonable grounds suspect that a person has entered Canada without presenting himself or herself in accordance with subsection 11 (1), to stop that person to question the person and examine any goods imported by that person within a reasonable time after the person has entered Canada.

Canada Shipping Act

10. The Canada Shipping Act requires certain watercraft to be registered or carry an issued license number.
11. Section 63.1 stipulates that it is an offence to operate a registered vessel without registration aboard.
12. Sections 100 and 101 require certain pleasure craft to be licenced and that their owners maintain a copy of that license on board the vessel.

PURPOSE AND SCOPE

13. The purpose of this policy is to provide guidelines to CBSA personnel for conducting marine pleasure craft examinations.
14. It is also the purpose of the policy to emphasize the importance of health and safety when boarding and examining marine pleasure craft.
15. This policy applies to all CBSA personnel.

BACKGROUND

16. In 1996, the Marine Centre of Expertise (MCE) was established to train CBSA personnel working in the marine environment as well as to contribute to the development and approval of examination practices. The core curriculum delivered at the MCE includes marine in-service, vessel rummage, Remote Operated Vehicle (ROV) as well as container and pleasure craft examinations. In doing so, the MCE plays a central role in helping the CBSA meet its strategic objective to keep Canada's population safe and secure. All programs must meet the Canada Labour Code Part II, Canada Occupational Health and Safety Regulations and the National Joint Council Occupational Health and Safety Directive, and meet the CBSA's obligation to provide a safe working environment for its employees at all times.
17. With MCE training, officers have the expertise to conduct thorough vessel examinations in a professional and safe manner. They are also in the best

position to identify and interdict illicit contraband that may be hidden onboard marine pleasure craft.

POLICY GUIDELINES

General

18. As per the National Training Standards, only officers who have successfully completed the CBSA Small Vessel Examination Course (S9018-N) will conduct examinations of pleasure craft.
19. CBSA officers will board pleasure craft that are at a . Officers will any person or conveyance found along the border the CBSA Port of Entry (POE) or designated reporting sites. These types of activities with the Agency's mandated responsibilities and Please refer to the CBSA and the Royal Canadian Mounted Police Joint Policy for further information.
20. Officers should familiarize themselves with indicators, concealment methods and other related information by reading intelligence bulletins, alerts and other relevant publications available.
21. Any problems encountered in following this policy or in the performance of an examination are to be reported immediately to the responsible CBSA superintendent or manager.

Health and Safety

22. Health and safety information may be gathered by the attending officers or the Telephone Reporting Centre (TRC) in advance of the actual boarding. Such information should be used or kept in mind as part of the boarding of the vessel, the examination and the dealings with the travellers.

Note: This will enhance the effectiveness, as well as the focus and depth of the examination.

23. CBSA personnel are to continually perform a risk assessment of the work area at all times while onboard or around a vessel and take appropriate actions to protect themselves/fellow officers against any present and/or potential hazards, including using/wearing personal protective equipment (PPE). Officers will report any identified health and safety issues immediately to a superintendent

24. As an accidental fall into the water presents a risk of hypothermia and drowning, at all times while working on or near the water, the side of a dock/wharf or on the deck of the vessel, officers will wear their personal flotation device (PFD) that has been provided by the CBSA in addition to all PPE and CBSA-approved protective footwear.

Note: Refer to the National Joint Council, [Part XIII](#)-Personal and Protective Equipment and Clothing Directive and the *Canada Occupational Safety and Health Regulations, Part XII - Safety Material, Equipment, Devices and Clothing Directive* for the requirements that must be met where these standards are applicable. Additional details are also available in Part 4, Chapter 8, Commercial Marine Vessel Examination Policy and Procedures, Appendix B.

25. Life vests and buoyancy devices (also known as PFDs) must be non-cumbersome and meet the requirements of the *Canadian General Standards Boards for Personal Flotation Devices*. Devices must meet the following Canadian General Standards Boards standard. Approved equipment includes: Mustang Survival MD3157, MD3154, MD3188; North Water Standard PFD, and the updated models of these PFDs.
26. After assessing the risks in an area, officers will take appropriate action to protect themselves against hazards.
27. Officers are permitted to tactically reposition or withdraw from any situation, if in their judgement there is an undue risk to their safety, that of another officer and/or a member of the general public.

Note: Refer to section 128(1) of the [Canada Labour Code](#).

28. When working in a noisy environment, officers will wear CSA-approved hearing protection.
29. Officers will identify and report health and safety issues to the superintendent and their co-workers.
30. In accordance with local/provincial legislation, officers may smoke only in areas designated by the owner/operator/captain. This does not include areas outside the owner/operator/captain's designation where crew or passengers may choose to smoke.
31. When encountering hazardous materials onboard a marine pleasure craft, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards), Canadian Transport Emergency Centre (CANUTEC) guidelines and Material Safety Data Sheets; accessible through the [Canadian Centre for Occupational Health and Safety website](#).

32. Prior to any enclosed space inspections, the area must be well ventilated and evaluated to ensure it is safe to examine. Officers will not enter areas suspected of being confined spaces. For further information on confined spaces and relevant policy, refer to *National Joint Council, Occupational Health and Safety Directive, [Part XII – Confined Spaces](#)*.

Pleasure Craft Examination

PROCEDURES

Note: Refer to the Small Vessel Examination Course (S9018-N) material from the MCE for detailed procedural guidelines.

Arrival and Boarding

33. Park vehicles in an area where they will not interfere with traffic and where it is safe to do so.
34. While approaching the vessel, be aware of your surroundings as well as any indicators that may be present.
- 35.
36. Before any examination, ensure that the following steps are followed:
 - a) wear proper clothing and footwear;
 - b) ensure proper tools are available to conduct intensive examinations;
 - c) ensure communications equipment is functional and adequate;
 - d) contact the office to inform of arrival on scene and time of boarding vessel;
 - e) keep the office informed of progress of examination and have scheduled check-in calls for high-risk situations (i.e. every 20 minutes); and
 - f) complete a risk assessment and look for items of potential risk that may include but are not limited to:
 - i. fuel in the vessel's bilge;

- ii. leaking fuel tanks;
- iii. excessively smoking engines;
- iv. hidden persons;
- v. weapons;
- vi. slippery, broken, steep or missing ladders;
- vii. debris and garbage about the decks;
- viii. missing planks or holes in the deck;
- ix. slippery decks;
- x. presence of butane and propane gas leaks;
- xi. presence of pyrotechnics;
- xii. low overhead;
- xiii. open hatches or scuttles;
- xiv. poor lighting or
- xv. exposed wiring.

g) ensure that it is safe to board the vessel at this time.

37. When boarding a small marine pleasure craft from a small boat, step as near amidships as possible. Avoid stepping on the gunnels (edge or railing) to improve safety and prevent falls. Pay attention to the lively motion of the vessels. Ensure suitable footing and handholds prior to proceeding on to the vessel.
38. When boarding a larger marine pleasure craft, if possible, use the step on the transom or the aft gunnels to make boarding fairly easy and safe.
39. Whenever boarding a marine pleasure craft, keep your hands free. Load your personal gear on the boat's deck then board.
40. Always keep in mind that walking surfaces aboard may be covered with dew, spray or rain and might be slippery and/or icy.
41. Upon boarding a pleasure craft and when practical, officers should meet with the person in charge to request documentation and perform a document review before proceeding with an interview. Advise the owner/operator/captain what is required from them and all travellers.
42. Provide the opportunity for all persons to fulfill reporting obligations (i.e. ensure all passengers are thoroughly questioned).
43. Arrange with the owner/operator/captain for access to all areas. For safety reasons, notify the vessel's operator and ensure machinery or electrical components are turned off and locked out, prior to examining a piece of machinery or electrical component, particularly in the engine room/compartment.

44. Advise your superintendent and co-workers of the potential health and safety issues present.
45. Inform your superintendent and co-workers of the presence of asbestos on the vessel.

Note: If the presence of asbestos is confirmed or unknown (suspected), proceed according to the [Respiratory Protection Program](#).

46. Review documentation and proceed with the captain's interview.
47. Compare the information provided by the owner/operator/captain to the ship's documentation and targeting information.
48. If applicable, request that the crew be mustered and confined to an area when it is determined that it is the most practical approach or there are serious health and safety concerns.
49. Always perform a thorough and consistent examination, building the intensity of the examination based on indicators that have been observed and can be articulated.
50. Examinations of pleasure craft will be completed in a professional and consistent manner. Privacy of individuals on board should be respected during the examination as much as practicable. Refer to Appendix A PLEASURE CRAFT 7-14 POINT EXAMINATION STANDARDS FOR POWER AND SAIL PLEASURE CRAFT for suggested systematic approach.
51. Examination of a marine pleasure craft as a result of _____ must be undertaken in accordance with the minimum standards outlined in Appendix A - PLEASURE CRAFT 7-14 POINT EXAMINATION STANDARDS FOR POWER AND SAIL PLEASURE CRAFT.
52. Immediately report any damage caused by an examination to the owner/operator/captain.
53. Inform the owner/operator/captain when an intensive examination is about to be conducted and when it is safe to do so, request that he/she be present throughout the examination.
54. Address questions to the owner/operator/captain on all areas being examined.
55. Use all tools available whenever possible to avoid dismantling parts and to reduce the chances of breaking any components.

Note: An intensive examination involves the dismantling of parts, which could affect the vessel's safety and operation. Officer safety is of the utmost importance when conducting detailed examination, and as such, officers should limit the depth of their examination to which they are trained to carry out.

56. _____ and _____ can yield a significant amount of information and should not be neglected.
57. When the _____ is examined, wear safety glasses to protect against _____.
58. Never introduce body parts _____ before it has been shut down, isolated and secured.
59. Ensure caution is used when examining life rafts, safety equipment, pyrotechnics and fire-fighting equipment as they may have self-inflating features.

Note:

_____ must be treated with care. Immediately report any damage, particularly to _____ to the superintendent and owner/operator/captain.

60. If any confined spaces are encountered onboard a marine pleasure craft, act according to the Shipboard Confined Space Procedures.

Note: Refer to [Part 4, Chapter 8](#), Commercial Marine Vessel Examinations Policy and Procedures for information regarding examinations of confined spaces.

61. Officers may arrest crew or passengers for obstructing or hindering with an examination and remove them from the area.

Note: Refer to [Part 6, Chapter 1](#), Arrest and Detention and [Part 9, Chapter 2](#), Prosecution Procedures.

62. If the examination results in a seizure or enforcement action, ensure that current CBSA policy is adhered to.

Note: Refer to [Part 5, Chapter 2](#), Traveller Seizures and Ascertained Forfeitures for additional information.

- a) abiding by these policies and procedures;
- b) completing all required training courses prior to undertaking any of the functions listed below;
- c) conducting examinations in accordance with training and this policy and procedures;
- d) conducting examinations as per the roles and responsibilities assigned;
- e) maintaining in working order; personal tools, personal protection equipment and shared equipment used for examinations;
- f) maintaining all equipment logs as per Canada Labour Code and as directed by the manufacturers' instructions;
- g) practicing due diligence in protecting their health and safety and that of the public;
- h) taking necessary precautions with respect to marine pleasure craft, traveller and officer safety before, during and after a marine pleasure craft examination;
- i) completing applicable reports and inputting results of marine pleasure craft referrals into the Telephone Reporting Centre System (TRCS). If the verification office does not have access to the TRCS, they will fax their results to the TRC for acquittal; and
- j) reporting to the superintendent and/or manager any problems or issues encountered while performing their duties.

CBSA Regional Management

72. CBSA Regional Management for Marine Operations are responsible for:

- a) promoting, monitoring and ensuring adherence to this policy and procedures;
- b) ensuring all BSOs who work in the marine environment receive the required training, as well as adequate tools and equipment;
- c) guiding and supporting BSOs in the performance of their duties;
- d) promoting, monitoring, and addressing any breach of procedural or health and safety requirements as well as recommending corrective measures;

- e) ensuring examination results include additional information such as specific details pertaining to the referral request, as well as examination results and any information that may be pertinent for future risk assessment (i.e. closing the loop); and
- f) approving changes to examination procedures, if circumstances dictate.

Human Resources Branch - Marine Centre of Expertise

73. The Marine Centre of Expertise (MCE) is responsible for:

- a) developing, designing and delivering training related to marine pleasure craft examination;
- b) researching and developing new practices for efficient, safe, and effective marine pleasure craft examinations;
- c) conducting testing of contraband detection equipment related to marine examination;
- d) developing procedures for marine pleasure craft examinations;
- e) providing on-site guidance and assistance upon request to officers examining marine pleasure craft when feasible and circumstances dictate; and
- f) exchanging information and techniques with other domestic and international marine training facilities.

Programs Branch - Traveller Programs Directorate

74. Traveller Programs Directorate is responsible for:

- a) developing, implementing, modifying and approving all policies and procedures for marine pleasure craft examinations as required;
- b) monitoring adherence to this policy and procedures by the regions; and
- c) providing guidance and support to the MCE and regions on marine pleasure craft examination when required.

Programs Branch - Commercial Program Directorates – Secondary Examination Unit

75. Secondary Examination Unit is responsible for:

CBSA ENFORCEMENT MANUAL

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND CONVEYANCES

Chapter 2

TRAVELLER SEIZURES AND ASCERTAINED FORFEITURES

2017/02/13

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to use seizure as its main enforcement tool when dealing with travellers' infractions. The Administrative Monetary Penalty System (AMPS) is to be used when dealing with commercial infractions.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 7.1 – States that any information provided to an officer in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Imports Measures Act* or under any other Act of Parliament that prohibits, controls, or regulates the importation or exportation of goods must be true, accurate, and complete.
4. Subsection 11(1) – States that all persons arriving in Canada shall enter only at a CBSA office designated for that purpose that is open for business and without delay, present himself or herself and answer truthfully any questions asked by an officer.
5. Subsection 12(1) – States that all goods that are imported must be reported at the nearest CBSA office that is open for business except under certain circumstances or subject to prescribed conditions.
6. Section 13 – States that every person who reports goods under section 12 or is stopped by an officer under section 99.1 shall:
 - a) answer truthfully questions asked by the officer respecting the goods; and
 - b) if requested by an officer, present the goods and make them available for examination.
7. Subsection 32(1) – States that no goods shall be released prior to their being accounted for and duty paid except under prescribed or regulated conditions.

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8. Subsection 101 – States that goods that have been imported or about to be exported may be detained until an officer is satisfied they have been dealt with in accordance to this Act or any Act of Parliament.
9. Subsection 110(1) – States that an officer, who believes on reasonable grounds that this Act or regulations have been contravened, may seize as forfeit any goods or conveyance that was made use of in respect to the goods.
10. Subsection 124(1) – States that an officer who believes on reasonable grounds that a person has contravened the provisions of this Act or regulations regarding goods or conveyance, the officer may, if the goods or conveyance are not found or the seizure is not practical, demand an amount of money equal to the value of the goods and the duties and taxes owing, or a lesser amount as the Minister may direct.

POLICY GUIDELINES

Contraventions

11. A contravention is a failure to comply with any legislation, regulation or condition of licensing or undertaking administered by the CBSA. A contravention may occur through an act of commission, or through an act of omission. An importer who does something contrary to the *Customs Act*, such as making a false statement, is contravening the Act by commission. An importer who fails to do something required by the *Customs Act*, such as failing to declare some goods, is contravening the Act by virtue of that omission.

Detention

12. Under the authority of section 101 of the *Customs Act*, officers may detain goods that have been imported or about to be exported until the officer is satisfied that the goods have been dealt with in accordance with the *Customs Act* or any other Act of Parliament.

Seizure

13. Seizures are remedies for civil violations as opposed to criminal offences. For this reason, although high standards of evidence must be maintained, the burden of proof required to support a civil action is less than that required for a criminal prosecution.
14. Seizures of goods are civil actions “in rem” or against goods. Prosecutions are criminal actions “in personam”, or against the person. Therefore, where there has been a contravention of a “civil” provision of the *Customs Act*, it would be preferable to rely on that provision. As an example, the failure to comply with the reporting of goods requirement would attract a civil charge pursuant to sections 12

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and 110 of the *Customs Act* rather than a charge of smuggling pursuant to section 159.

15. The prohibitions and offences detailed by sections 153 through 159 inclusive of the *Customs Act* should not be used at the time of seizure. These are more appropriately used for criminal charges. Criminal Investigations Division (CID) may recommend charges under all sections of the *Customs Act*. (see Part 9 Chapters 1 and 2, Prosecution Policy).

Seizure Policy

16. While the *Customs Act* provides for the seizure of all goods and conveyances (subsection 2(1) of the *Customs Act* defines conveyance as any vehicle, aircraft or water-borne craft or any other contrivance that is used to move persons or goods), it is not the policy of the CBSA to take seizure action in all cases. It is recognized that not all contraventions of the *Customs Act* or the regulations are intentional on the part of the person who contravenes them. Negligence, carelessness and lack of knowledge on the part of the importer are mitigating factors worthy of consideration when deciding whether or not to proceed with a seizure action.

In instances involving travellers, it is the policy of the CBSA to extend the benefit of doubt, in lieu of forfeiture and seizure, when it appears evident that the traveller was not aware of CBSA requirements. In such instances, the traveller is to be allowed all entitlements for which they qualify.

17. Seizures result in a referral rate for the person indicated as the principal in a seizure action. The referral rate lessens periodically and returns to normal within 6 years.
18. The referral rate for a person identified as an associate does not increase but an inquiry in the Primary Automated Lookout System (PALS) or the Integrated Primary Inspection Line (IPIL) on the name will reveal information pertaining to the person's association with a seizure action.
19. Officers may seize conveyances used in the unlawful importation of goods (section 110 (1) of the *Customs Act*) or the unlawful transportation of persons (section 110 (2) of the *Customs Act*). However, it is not the policy of the CBSA to seize a conveyance in every case. For goods seized in paragraphs 95 or 100 the conveyance should also be seized whenever a Level 2 or 3 is warranted (as per paragraphs 85 and 86).
20. In cases involving public conveyances e.g. bus, ferry, where passengers are discovered with unreported goods, the conveyance is not to be seized. If it is determined that the person in charge of the conveyance is implicated then the conveyance may be seized.
21. Forfeiture means the loss of proprietary rights, as associated with goods or conveyances. This takes effect at the time of a contravention. The Crown

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becomes the lawful owner at this time and through the act of seizure takes possession of its own property.

22. The seizure provisions of the *Customs Act* only allow for seizure action where there is a contravention of the *Customs Act* or the regulations written pursuant to that Act. Seizures involving contraventions of other acts or their regulations are not authorized under the *Customs Act*.

Note: Goods may be detained under the authority of section 101 until other government department or agency requirements have been met.

23. In instances where there are multiple occupants of a single vehicle in which undeclared goods are found:
 - a) if the amount of goods per individual cannot be determined, officers may create one K19 seizure receipt, identify one principal, assess an amount equal to the aggregate value of goods and seize the conveyance if appropriate; or
 - b) If the amount of goods per individual can be determined, officers may create a K19 seizure receipt for each individual based on the amount of goods per individual, and document the seizure of the conveyance if warranted, on only one of the seizure receipts.
24. When completing the K19 there should only be one principal identified on the form.
25. In the following sections of this chapter, terms of release are specified for the various contraventions. It should be emphasized that the Minister has set these terms of release pursuant to subparagraph 118(a)(ii) of the *Customs Act*.

Threshold for Initiation of Seizure Action

26. While there is no minimum threshold established by law for the initiation of a seizure action, administratively it may not be practical in all instances. It is recommended that CBSA officers use their discretion before proceeding with such enforcement action when the value for duty of the undeclared or unlawfully imported goods is below \$100.00.

Exceptions (subject to reasonable discretion):

27. Seizure action should not normally be taken on alcohol and tobacco products on quantities less than the following:
 - a) 1 L of liquor;
 - b) 1 L of wine;
 - c) 2 dozen beers (or approximately 8.5 litres);

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- d) 200 cigarettes;
 - e) 400 g tobacco; or
 - f) 400 tobacco sticks.
28. In instances where a seizure is issued for less than the above noted recommended minimum, no conveyance seizure should be applied.
29. In situations involving repeat offenders, officers may use their discretion for seizure action on low value goods. In cases where individuals have not been deterred by a previous warning or enforcement action, seizure or higher-level terms of release should be applied.

ALLEGATIONS

Section 12 allegations

30. The allegation of **non-report** of an import will be used for seizures against travellers who have not reported the importation of personal goods, regardless of the method of concealment used to unlawfully introduce the goods into Canada. The appropriate wording is as follows: "The said goods are seized under section 110 of the *Customs Act* because they have been unlawfully imported by reason of non-report, contrary to the provisions of section 12 of the said Act."

Section 7.1 allegations

31. The allegation of **inaccurate information pertaining to an import** will normally be used when a person has given untrue, inaccurate or incomplete information (other than value) to an officer, either verbally or in writing, in regards to goods being imported. This includes a false description. The appropriate wording is as follows: The said goods are seized under section 110 of the *Customs Act* because the information provided to the CBSA pertaining to the import of these goods was not true, accurate or complete in contravention of **section 7.1** of the *Customs Act*.

Note: The allegation of inaccurate information (contravening section 7.1) applies when a person declares an import but provides a false country of origin with intent to evade duties and taxes or permit requirements. This includes situations in which a person has stated that goods are Canadian goods returned when in fact they are being imported for the first time. People do not necessarily know the rules of origin and discretion should be used in each case before a seizure is applied for origin.

32. The allegation of **undervaluation** will normally be used when a person has given a false value to an officer, either verbally or in writing, in regards to goods being imported. The appropriate wording is as follows: The said goods are seized under section 110 of the *Customs Act* because the value provided to the CBSA

pertaining to the import of these goods was not true, accurate or complete in contravention of **section 7.1** of the *Customs Act*.

Section 11 allegations

Failure to report inwards (Section 11)

33. Contraventions involving a failure to report inward occur when a person does not, on arrival in Canada, enter Canada at a CBSA office designated for that purpose that is open for business. This contravention takes place when entry into Canada does not take place at a designated and open port of entry (e.g. enter between ports of entry, at a closed port). This is a contravention of section 11 of the *Customs Act* and the conveyance becomes subject to seizure.

The allegation of **failure to report inwards** will normally be used to describe infractions where a person does not enter Canada at a designated and open port of entry. The appropriate wording is as follows:

“That the said vehicle/vessel/aircraft was used to transport persons into Canada in contravention of the *Customs Act*”.

Running the port (Section 11)

34. Running the port contraventions take place when a person, on arrival in Canada, enters Canada at a CBSA office designated for that purpose that is open for business, but passes through without reporting to an officer, or fails to remain at or leaves the confines of the CBSA office in defiance of an officer's instructions. This is a contravention of section 11 of the *Customs Act* and the conveyance becomes subject to seizure.

The allegation of **running the port** will normally be used to describe the act of failing to remain at the port of entry until the CBSA process is completed and/or leaving against the orders/instructions of an officer (e. g. did not stop at the primary inspection line, failed to report to the secondary examination area as instructed, left the CBSA office without having been released). The appropriate wording is as follows:

“That the said vehicle/vessel/aircraft was removed from a CBSA office without having been released by an officer”.

Note: For vehicle seizures under the *Immigration and Refugee Protection Act* (IRPA), refer to Immigration, Refugee and Citizenship Canada (IRCC) [ENF 12 - Search, Seizure, Fingerprinting and Photographing](#)

35. The allegation of **failure to transport passengers and crew** will normally be used to describe the situation where the person in charge of a conveyance fails to

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transport passengers or crew to a CBSA office for presentation. This is a contravention of section 11(3) of the *Customs Act*. The conveyance becomes subject to seizure and the appropriate wording is as follows: "That the person in charge of this conveyance failed to transport passengers or crew for presentation at a CBSA office". Under AMPS this allegation is committed by a person in charge of a commercial conveyance, e.g., bus, commercial aircraft. C018 is the appropriate allegation to use in such cases.

36. There are regulations written pursuant to Section 11 of the *Customs Act*, which govern the presentation of persons arriving in Canada. When a **contravention of the *Presentation of Persons Regulations*** occurs, the conveyance used to transport such persons becomes subject to seizure. The Minister has directed that under these specific circumstances terms of release will be offered on the basis of a fixed monetary amount.

Multiple allegations involving a conveyance

37. In instances of multiple contraventions by the same or different people in one conveyance, the conveyance cannot be seized more than once.
38. If a person has contravened section 11 or its regulation (for example by failing to present himself, passengers or crew), and has also contravened section 7.1 or 12 (for example by inaccurately reporting or failing to report goods), the officer will seize the conveyance and select the most appropriate section 11 allegation (see allegations above). The officer may issue a second K19 seizure receipt for inaccurate information or the failure to report goods in accordance with section 7.1 or 12 but would not apply a conveyance penalty.
39. Where no section 11 allegation is applicable, officers can document both section 7.1 and section 12 contraventions on the same K19 seizure report along with any applicable conveyance penalty. The conveyance penalty applies to the aggregate of goods.

Undeclared Conveyances

40. CBSA officers may encounter contraventions involving undeclared or improperly entered foreign or non-duty paid conveyances. When a traveller has been given the opportunity to make a full and complete declaration at primary concerning any purchases or acquisitions abroad and fails to declare the acquisition of the conveyance being used to enter Canada, such conveyance may be seized as being not reported. The non-report allegation shall apply.

Prohibited Conveyances

41. Foreign vehicles imported from other than the United States may be prohibited entry under tariff item 9897. Should a prohibited vehicle (that is a vehicle that would not qualify for an exemption of the prohibited status under normal

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50. A conveyance seizure may apply when seizing undeclared, uninstalled accessories such as radios, antennas, seat covers, body ornaments, wheel covers, tape decks, speakers, etc., because they are not necessary for the operation of the vehicle.
51. When a conveyance is first imported (not a Canadian good returned), the value must include not only the purchase price but also all upgrades. If the upgrades or repairs are not included in the declared value, the conveyance may be seized using the allegation of undervaluation.

Modified Conveyances

52. A modified conveyance for CBSA purposes is defined as a conveyance that has been modified from the manufacturer's original design by adding compartments or manufacturing access to areas otherwise inaccessible, for the specific purpose of illegally importing goods.
53. Modifications that fall within this definition may include but are not limited to:
 - a) a false wall built in the nose, ceiling or sides of a trailer;
 - b) the welding of a compartment to the chassis of a conveyance;
 - c) partitioning of a gas tank; and
 - d) adding a secret door to access a compartment or area not originally accessible on a conveyance.
54. When goods subject to seizure are found behind false panels or within hidden compartments, the conveyance is to be seized. It is not to be offered for release without consideration of the nature and quantity of the goods seized, the amount of revenue evaded, the market value of the conveyance and the extent of the modifications.
55. When a conveyance has been modified and there is no contravention relating directly to the modification (e.g. a modified gas tank is empty), the conveyance cannot be seized on those grounds.
56. Where only minor quantities of dutiable goods or prohibited goods are seized, release may be offered in the normal manner, providing the modifications are not extensive and that prior to release they are rendered inoperable. Any costs incurred by the CBSA for rendering the modifications inoperable are to be added to the terms of release but not included on the seizure receipt.
57. The modification costs should be itemized on a K24 (*Non-Monetary General Receipt*).

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release for conveyances used in smuggling personal use quantities of drugs is included later in this chapter.

Conveyances Used in Unlawful Importations of Undeclared Firearms and Prohibited Weapons

67. Conveyances used by individuals to unlawfully import firearms and prohibited weapons may be subject to seizure. The schedule of terms of release is found later in this chapter. (See Part 2 Chapter 3 Firearms and Weapons)
68. Officers are encouraged to use discretion in seizing conveyances if the prohibited weapon is not a firearm (e.g. a switchblade). However, there may be instances where it is preferable to take a further deterrent action in addition to seizing the prohibited weapon, especially when there is evidence of intent to smuggle. In such cases, officers may seize the conveyance and offer it for release. The schedule of terms of release is found later in this chapter.

Third Party Notification

69. An officer seizing goods or conveyances will, at the time of the seizure, take positive steps to determine if there are or could be third parties involved.
70. Where it is determined that the person from whom the goods or conveyances are seized is not the actual owner of the goods, or it is apparent that there is an outstanding lien against the goods (this may be indicated on a sales receipt, or an insurance or registration slip), the owner, mortgage, or lien-holder must be notified that the goods are under seizure and that they may make application under section 138.
71. Notification under subsection 110(4) to the owner, mortgage, or lien-holder will be in the form of a completed Notice of Seizure (K138).

Note: Circumstances of the actual seizure are confidential between CBSA and the person from whom the goods or conveyance was seized and should not be quoted in the notification.

72. A copy of each K138 form must be forwarded immediately to the Adjudications Division if an appeal is filed

TERMS OF RELEASE - GOODS

73. The terms of release for seizures of personal goods unlawfully imported by travellers into Canada is dependent on two factors:
 - a) the group that the commodity falls into; and
 - b) the level of the infraction.

The Groups

74. The CBSA's categorizes commodities under three groups to alleviate the necessity for officers involved in enforcement actions to devote an inordinate amount of time classifying goods in order to arrive at a terms of release factor.

Group 1

75. Group 1 includes clothing, footwear, textiles (including towels), bedding, curtains, carpets, jewellery and watches. The principle behind the division of goods was established on the basis that commodities attracting a combined rate of duties and taxes of 25 per cent or more should fall under a separate group - Group 1 - and they should attract higher terms of release due to the potential for higher revenue loss.

Group 2

76. Group 2 covers other goods attracting combined rates of duties and taxes of less than 25 per cent. The terms of release for violations involving such goods are less than those in Group 1 because of the lesser potential for revenue loss. Group 2 includes all goods except for group 1 goods, alcoholic beverages and tobacco products.

Group 3

77. Group 3 was created to cover the exceptions to group 1 and 2, namely all alcoholic beverages and tobacco products. These were treated separately as there are no terms of release.

Levels of Infractions

78. For the purposes of determining the appropriate terms of release applicable to the range of violations, three levels or degrees were established to recognize the culpability of the individual. The terms of release with few exceptions have been based on a factor calculated on a percentage of the value of the goods.
79. It is important to realize that terms of release for seized goods are only offered subsequent to the actual physical seizure authorized by section 110 of the *Customs Act*.
80. The authority for return of goods seized is pursuant to section 117 of the *Customs Act*, which specifies that an officer may, subject to this or any other Act of Parliament, return any goods that have been seized under this Act to the person from whom they were seized or to any person authorized by the person from whom they were seized on receipt of:

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- a) an amount of money of a value equal to
 - i) the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto
 - (A) at the time of seizure, if the goods have not been accounted for under subsection 32(1), (2) or (5) or if duties or additional duties have become due on the goods under paragraph 32.2(2)(b) in circumstances to which subsection 32.2(6) applies, or
 - (B) at the time the goods were accounted for under subsection 32(1),(2) or (5), in any other case, or
 - ii) such lesser amount as the Minister may direct; or
- b) where the Minister so authorizes, security satisfactory to the Minister.

Level 1

81. Level 1 applies to violations of lesser culpability. The degree to which the importer carried out a scheme to contravene the *Customs Act* was not furthered beyond an initial ineffectual attempt. This level might generally be applied to offences of omission, rather than commission. Commission offences require more active involvement by the importer.

Level 2

82. Level 2 applies to violations where the circumstances demonstrate an active attempt by the importer to contravene the *Customs Act*. It is also applicable to instances involving repeat offenders, where it has become apparent that a stronger deterrent factor is required.

Level 3

83. Level 3 applies to circumstances where evidence exists of a more sophisticated scheme involving devices to facilitate the violation or where the individual concerned has been the subject of previous seizure action.

Non-Report and Inaccurate Information

84. Level 1 is applied when:
- a) goods are not reported to CBSA or goods are reported but inaccurate information is given concerning acquisition, entitlements or description; and
 - b) the goods are not concealed; and

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- c) a full disclosure of the true facts concerning the goods is made at the time of the discovery.
85. Level 2 is applied when the circumstances are the same as for level 1 but:
- a) goods are concealed or disguised, or
 - b) inaccurate information is given concerning the goods following their discovery; or
 - c) the person has been the subject of a previous seizure action.
86. Level 3 is applied when the circumstances are the same as for level 2 but:
- a) false documents or receipts are presented for the goods; or
 - b) goods are concealed within false compartments; or
 - c) the person has been subject to previous seizure action.

Undervaluation

87. Level 1 is applied when:
- a) goods are reported for a value less than their actual transaction value but no falsified documents were presented; and
 - b) full disclosure is made prior to the discovery of documentary evidence
88. Level 2 is applied when :
- a) No falsified documents were presented however documentary evidence is found, revealing the actual value of the goods is more than reported before full disclosure is made; or
 - b) the person has been subject of a previous enforcement action.
89. Level 3 is applied when the same criteria exist as for level 2, except the person is in possession of, and attempts to use falsified documents to support the undervaluation.

TERMS OF RELEASE – CONVEYANCES

90. The Special Terms of Release for Conveyances Used in Smuggling Personal Use Quantities of Drugs are as follows:

Amount	Marijuana	Hashish	Hashish Oil	Controlled Drugs	Hallucinogens	Cocaine/ Opiates
*\$220	over 8 grams but not over 15 grams	over 2 grams but not over 4 grams	1 gram or less	over 10 pills but not over 20 pills	over 1 dosage but not over 4 dosages	1 gram or less \$400
\$440	over 15 grams but not over 30 grams	over 4 grams but not over 8 grams	over 1 gram but not over 2 grams	over 20 pills but not over 40 pills	over 4 dosages but not over 8 dosages	
\$550	over 30 grams but not over 60 grams	over 8 grams but not over 16 grams	over 2 grams but not over 4 grams	over 40 pills but not over 60 pills	over 8 dosages but not over 12 dosages	
\$660	over 60 grams but	over 16 grams	over 4 grams	over 60 pills but not	over 12 dosages but	

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	not over 100 grams	but not over 24 grams	but not over 6 grams	over 80 pills	not over 16 dosages	
\$770	over 100 grams but not over 150 grams	over 24 grams but not over 32 grams	over 6 grams but not over 8 grams	over 80 pills but not over 110 pills	over 16 dosages but not over 20 dosages	
\$880	over 150 grams but not over 200 grams	over 32 grams but not over 40 grams	over 8 grams but not over 10 grams	over 110 pills but not over 140 pills	over 20 dosages but not over 24 dosages	
\$990	over 200 grams but not over 250 grams	over 40 grams but not over 46 grams	over 10 grams but not over 12 grams	over 140 pills but not over 160 pills	over 24 dosages but not over 28 dosages	
\$1100	over 250 grams but not over 300 grams	over 46 grams but not over 56 grams	over 12 grams but not over 14 grams	over 160 pills but not over 180 pills	over 28 dosages but not over 32 dosages	

For amounts in excess of the above stated sums:

over 300 grams: \$4 for each additional gram	over 56 grams: \$20 for each additional gram	over 14 grams: \$70 for each additional gram	over 180 pills: \$8 for each additional pill	over 32 dosages: \$40 for each additional dosage	over 1 gram: \$400 for each gram
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*Note: This amount may be applied in instances of smaller quantities if the individual is known to have a previous history of drug smuggling.

Special Terms of Release for Conveyances Used in Smuggling Commercial Quantities of Drugs

91. See AMPS Master Penalty Document. Also refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures, and AMPS Policy and Procedures for further details.
92. Only conveyances that have been modified for smuggling purposes will be seized. There are no terms of release and an AMP penalty applies as well.

93. The terms of release for the return of seized conveyances for firearms and weapons (customs tariff 98.98) as well as penalty amounts for ascertained forfeitures are as follows:

Commodity	Amounts of Money for the Return of Seized Conveyances for Non-Report and Inaccurate Information		
	<u>First Contravention</u>	<u>Second Contravention</u>	<u>Third and Subsequent Contraventions</u>
Non-Restricted Firearms	50% of the terms of release offered for the firearm	100% of the terms of release offered for the firearm	100% of the terms of release offered for the firearm
Restricted or Prohibited Firearms	\$1000/ firearm	\$2000/ firearm	\$3000/ firearm
Prohibited Weapons (other than firearms)	\$500/ item		
Prohibited Ammunition	\$500/ commodity group		
Prohibited Devices (e.g. handgun barrel, silencer, large-capacity cartridge magazine, replica firearm)	\$500/ commodity group		
Components or parts designed exclusively for use in manufacturing or assembling automatic firearms	\$500/ commodity group		

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Note: If duty had been paid on the \$1,000.00 declared, the calculation would be done as follows:

TERMS OF RELEASE - 25% of	= \$ 750.00
\$3,000.00	
on \$1,000.00 Duty factor	= <u>\$ 000.00</u>
TOTAL	\$ 750.00

- b) **Level 2, group 2:** A traveller declares at primary that he bought a car for \$1,000.00 but does not have a receipt to present. The officer finds hidden in a book, on the dashboard, a receipt for the same car for the amount of \$4,000.00. The calculation is:

TERMS OF RELEASE - 40% of	= \$1,200.00
\$3,000.00	
on \$1,000.00 Duty factor	= <u>\$ 138.48</u>
TOTAL	\$1,338.48

- c) **Level 3, group 2:** A traveller declares at primary that he bought a car for \$1,000.00. At the secondary level he presents a receipt for \$1,000.00. The officer finds hidden in a book, on the dashboard, a receipt for the same car for the amount of \$4,000.00. The calculation is:

TERMS OF RELEASE - 55% of	= \$1,650.00
\$3,000.00	
on \$1,000.00 Duty factor	= <u>\$ 138.48</u>
TOTAL	\$1,788.48

100. The terms of release amounts for alcoholic beverages and tobacco products are as follows:

NON-REPORT (Sec. 12), INACCURATE INFORMATION or UNDERVALUATION (Sec 7.1)			
Group 3 - All alcoholic beverages and tobacco products	<u>Level 1</u> no terms of release	<u>Level 2</u> no terms of release	<u>Level 3</u> no terms of release
Conveyance Terms of release	N/A	\$40/200 cigs \$120/Kg. Tobacco \$10/Ltr. Alc \$10/24 beer \$2/Ltr. Wine	\$55/200 cigs \$160/Kg. Tobacco \$12/Ltr. Alc \$12/24 beer \$3/Ltr. wine

Note: Cigars, tobacco sticks, and other such products manufactured from tobacco, but not specifically mentioned should be treated as tobacco with the same terms of release applied.

Unconditionally Duty Free and Tax Exempt or 0 Per Cent Rated Goods

101. When unconditionally duty free and tax exempt or 0 per cent rated goods are not reported the following terms of release shall apply:

Level 1 and less than \$2000 value, forced accounting;
 Level 1 and \$2000 or over in value, 5 per cent of value;
 Level 2 or 3 and less than \$1000 value, forced accounting; or
 Level 2 or 3 and \$1000 or over in value, 10 per cent of value.

Exemptions and Entitlements

102. For a returning resident to qualify for an exemption on personal goods, two conditions must be fulfilled:

- the goods must be reported by that person at time of return to Canada (see tariff heading number 98.04); and
- the returning resident must have been absent the length of time specified by one of the classification numbers, whether it be 24 hours, 48 hours, or 7 days. A declaration of the length of absence is not a pre-requisite for this entitlement.

103. Once both of the foregoing conditions are met the additional entitlement of the preferential rates allowed pursuant to classification number 9804.30.00.00 may be extended, but only to a maximum of the originally declared values.

104. Officers will only give returning residents the benefit of personal exemptions on the value of goods that have been properly declared under classification numbers 9804.10.00 or 9804.20.00. In cases of nil declarations, no exemptions or preferential rates will be allowed. Exemption entitlements should be documented on declaration forms with copies to the seizure report.

105. Examples of the application of exemptions is as follows:

- a) A returning resident declares \$200 in clothing after an absence of 48 hours. During the secondary examination undeclared jewellery is found totalling \$400. Thus, the officer would:
 - i) allow a portion of an exemption of \$200 under 9804.10.00.00 (48 hrs absence); and
 - ii) seize on the balance of \$400

- b) A returning resident declares a jewellery item worth \$1050, and claims the \$750 exemption entitlement after a stated absence of seven days pursuant to classification number 9804.20.00.00. The overage of \$300 would normally attract the beneficial duty rate pursuant to classification number 9804.30.00.00. Following secondary examination evidence is discovered which reveals that the returning resident has made an intentional false declaration and was only absent for six days. The officer would:
 - i) allow a \$400 exemption under 9804.10.00.00 (48 hrs. absence);
 - ii) allow \$300 at the beneficial duty rate under 9804.30.00.00; and
 - iii) seize on \$350 (difference between the claimed and actual personal exemption entitlement)

- c) A returning resident declares to CBSA the purchase of a television set having a value of \$500 and an exemption entitlement of \$400 after an absence of 48 hours pursuant to classification number 9804.10.00.00. The overage of \$100 would normally attract the beneficial duty rate pursuant to classification number 9804.30.00.00. Following secondary examination, a purchase receipt is found which shows the true value of the goods to be \$700, resulting in an undervaluation of \$200. The officer would:
 - i) allow a \$400 exemption under 9804.10.00.00 (48 hrs. absence);
 - ii) allow \$100 at the beneficial duty rate; and
 - iii) seize on the \$200 balance

Former Residents and Settlers

106. In the case of former residents and settlers, contraventions may occur with respect to inaccurate information given concerning the ownership, possession and use requirements, or for the accommodation of others. Where it is suspected that inaccurate information has been given, the officer should request the importer to

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produce a receipt and/or bill of lading for the goods. If doubt still remains, but there is insufficient evidence to take seizure action, the officer may extend the benefit of doubt and allow entry of the goods under tariff item 9805.00.00 or 9807.00.00, or may release the goods on payment of the applicable duty and taxes.

Note: When completing accounting documents with respect to a declaration of goods using tariff item 9805.00.00 or 9807.00.00, officers should ensure that the traveller reads and fully understands the conditions of the applicable tariff item.

Special Notes

107. When demanding a monetary deposit as terms of release pursuant to a seizure of goods, it is important to understand that all money demanded is considered to be a penalty. In any instances where duties and taxes become a consideration for terms of release pursuant to a seizure, they are only used as factors to calculate the prescribed penalty.
108. Non-residents who wish to export seized goods (except those goods with no terms of release), may be given the opportunity to export them provided that the officer is satisfied that the goods are not intended for consumption in Canada. Release for export should not be considered automatic, with every case being judged individually. When release for export (under CBSA supervision) is deemed appropriate, the normal terms of release should be calculated in accordance with the group of goods and level of offence. The total of goods and conveyance terms of release thus determined may then be reduced by 20 per cent in recognition of the export.
109. As an example, group 1, level 2 goods are seized having a value of \$1,000. The normal terms of release would be $\$1,000 \times 60\% = \600 with a conveyance terms of release (if applicable) of $\$600 \times 50\% = \300 for a total terms of release amounting to \$900. If terms are contingent on export the total dollars should be reduced by 20 per cent, i.e. $\$900 - (\$900 \times 20\%) = \$720$. It is not intended that the terms of release percentage be reduced.

Prohibited Goods (Customs Tariff 98.97 & 98.99)

110. Unlawfully imported prohibited goods may be seized using the form K19. This would include goods such as those listed in the *Customs Tariff* as prohibited.
111. No terms of release are to be offered for unlawfully-imported prohibited goods.
112. For conveyances used in the transport of unlawfully-imported prohibited goods:
 - a) when a level 1 seizure is warranted and the total value of the goods is less than \$200, the conveyance should not be seized;

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- b) when a level 2 or 3 seizure is warranted (e.g. repeat offender) and the total value of the goods is less than \$200, the terms of release are calculated at a flat rate of \$50; and
- c) when a level 1,2 or 3 seizure is warranted and the total value of the goods is \$200 or more, the conveyance may be seized and the terms of release are calculated at 25% of the total value of the goods.

113. In no case should the conveyance terms of release exceed the value of the conveyance.

114. No conveyance seizure should be applied when the conveyance itself is the object of the unlawful importation.

Prohibited and Restricted Firearms and Prohibited Weapons

115. When an undeclared restricted firearm, prohibited firearm or prohibited weapon is found in the possession of a non-resident or returning resident, the weapon may be seized and no terms of release are to be offered. (See Part 2 Chapter 3 Firearms and Weapons)

116. Non-restricted firearms may be offered for release provided that the person has the proper permits. Such weapons are classified as Group 2 goods and terms of release would be 25, 40 or 55 per cent of their value, depending on the level of the contravention. Terms of release for the conveyance would be either 50 per cent or 100 per cent of the terms offered for the goods, depending on the level of contravention.

If an undeclared restricted or prohibited firearm is seized from a traveller BSO's are advised to contact the regional Criminal Investigations Division (CID), Regional Intelligence Officer (RIO), RIFLO or local Police (for consideration of *Criminal Code* and/or *Customs Act* charges).

Alternate Inspection Programs (CANPASS, NEXUS, FAST etc.)

117. For participants in accelerated release programs, the same seizure thresholds will apply however the terms of release will be one level higher. Also, the participant may become ineligible for accelerated release programs (i.e. NEXUS, CANPASS or FAST/CDRP) or if already a member, participation may be cancelled. Conveyances, however, are not applied at one level higher just because the person is an accelerated program participant. Officers should refer to the applicable program regarding its policies and procedures for removal. The following is a link to a site containing information on alternative reporting methods for travellers.

[People Processing Manual, Part 3 – Trusted Traveller Programs](#)

- b) In the case of contraventions where it is determined that it was a deliberate act, the goods and any conveyance used may be seized, bearing in mind that seizure action is not normally taken unless the amount of revenue exceeds the specified thresholds. An allegation of non-report should be used, with terms of release offered as a level 2 contravention on the form K19S.
- c) In the case of repeat contraventions or contraventions involving goods of high value, where it is determined that a higher deterrent factor is warranted, terms of release detailed under a level 3 contravention should be offered, as well as consideration of criminal prosecution.

Ascertained Forfeitures

- 122. Section 124 of the *Customs Act* provides the authority to effect ascertained forfeitures in respect of goods or conveyances when: "the goods or conveyance is not found or if the seizure thereof would be impractical."
- 123. Generally the detection and enforcement of violations triggering ascertained forfeitures occur after the fact, that is, after the physical goods have left CBSA's control. Because of the foregoing this type of action is usually carried out by Investigations.
- 124. Ascertained forfeitures, because of the circumstances under which they occur, rely on a different standard of evidence, and they are documented on a K9 form, Notice of Ascertained Forfeiture. It is therefore recommended that in instances when officers feel that they have no alternative but to proceed with such enforcement action, they should request, through their immediate supervisors, to contact Investigations for guidance and advice on how to proceed.

Voluntary Disclosures

- 125. The Agency encourages voluntary disclosure of information relating to the possession of goods unlawfully imported into Canada.
- 126. Accordingly, revenue assessed as a result of bona fide voluntary disclosures should be collected by way of an accounting document rather than by seizure action.
- 127. There will, however, be instances when individuals will seek to circumvent seizure action once it becomes evident that their importing practices are being investigated. It is therefore recommended that when an officer believes this to be the case, the relevant information should be referred to either Investigations or a Regional Intelligence Officer.

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128. All accounting documents concerning voluntary disclosures should be annotated with the following statement: "Acceptance of these duties does not limit either the importer's liability or the Agency's ability to seize or take subsequent action against the goods or the importer."

Release of Seized Goods

129. CBSA officers must ensure that prior to releasing goods they comply with all federal and provincial legislation for which CBSA has administrative responsibility.

Note: Seizure action does not remove the status of restricted or prohibited goods.

130. Seized goods covered by the Import Control List must only be released for retention in Canada on the presentation of an appropriate permit once terms for release have been met.

Preferred Payment Options

131. Cash, certified cheque, money order or a valid credit card are acceptable methods of payment.
132. It is not the CBSA policy to accept security in lieu of payment of terms of release.
133. Where a person is unable to make a deposit in cash, certified cheque, money order or credit card, without unreasonable delay or inconvenience, officers may accept an uncertified cheque drawn on a Canadian bank for the portion of the deposit that cannot be made in cash or equivalent, for release of a conveyance only, provided that the officer is satisfied of the good faith of the person tendering the cheque.

Prosecutions

134. Superintendents and border services officers are reminded that in addition to civil enforcement action CBSA Investigations may undertake criminal prosecution. For further information refer to EN manual Part 9 Chapter 1, paragraphs 12-16 which describes "Referrals to Investigations" and "Prosecutions Categories".

Request for Correction

135. Section 127(1) of the Customs Act provides certain designated officers with the authority to cancel a seizure made under section 110 of the Customs Act within 30 days after seizure.
136. CBSA must be satisfied that there was no contravention or that there was a contravention but the amounts assessed, collected, demanded or taken as security are in error.

137. After the 30 day period has expired, all requests for cancellations, whether client or CBSA-initiated, must be sent to Adjudications who will determine whether the request is timely.

Adjudications

138. Officers should refer a traveller to the provisions of section 129 of the *Customs Act*, which are clearly embodied on the seizure form.
139. Under no circumstances will CBSA officers contact the Recourse Directorate for assistance in the decision-making process leading to seizure action.
140. All appealed CBSA enforcement actions, whether made by a CBSA officer, Investigations, or the RCMP must be reported immediately to the Director General (Recourse Directorate) under section 128 of the *Customs Act*.
141. Reports should deal with the specifics of a seizure and not contain any personal comments.
142. Officers are encouraged to take an active role in the adjudications process and to supply additional comments and evidence in matters, where a request has been made to do so by the adjudicator or where the officer feels it is required.
143. It is imperative that the seizing officer review all submissions made by the public and all correspondence sent out by the Recourse Directorate.
144. Officers must treat appeals received with concern and immediate attention.
145. Officers will treat any objection or enquiry concerning a seizure as an appeal. However, the objection or enquiry must be in writing.

Note: Clients have 90 days after the date of seizure or of service of a notice served pursuant to section 129 of the *Customs Act* in which to request a Minister's decision on the validity of the enforcement action.

146. Officers will not accept late claims as valid appeals, but will acknowledge receipt and forward it to the Recourse Directorate for their consideration
147. When a claim is in respect of goods that have been disposed of for any reason, the Recourse Directorate must be notified immediately. If the seizure is not upheld, and should the client want to take release of the seized goods, the CBSA must compensate the client for the goods in accordance with the applicable procedures for lost or damaged goods. Where a contravention has been upheld following an appeal and the goods have been inadvertently disposed of or sold off, the client is to be compensated for the value of the goods less the amount of the terms of release.

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148. Officers, superintendents, and managers must ensure that as soon as possible after receipt the following are forwarded to the Recourse Directorate:

- a) original appeals;
- b) copies of acknowledgements;
- c) comments of officers involved concerning all the points raised in a claim;
- d) whatever other comments superintendents or managers may deem appropriate;
- e) originals of any correspondence received on CBSA seizures;
- f) clear copies of any letters of criticism, including complaints against officers dealing with a seizure action;
- g) reports resulting from the investigation of complaints; and
- h) anything that may appear to be a claim from a lien-holder or third party interest pursuant to section 138 of the *Customs Act*.

149. Cases will be held open until the seizing CBSA office is notified of a ministerial decision and, where applicable, the Recourse Directorate issues subsequent instructions concerning disposition of any goods remaining on hand.

150. Where an appeal is filed or a case is being held open for further investigation or other reasons, disposition of goods remaining on hand and the closing of cases must be withheld pending notification (e.g. third party orders, Federal Court Appeals).

Note: From the time an appeal and/or third party claim is received, the case becomes the responsibility of the Recourse Directorate under the provisions set out in sections 129 to 141 of the *Customs Act*.

REFERENCES

151. *Customs Act*
Customs Tariff Act
 ICES User Reference Manual
Controlled Drugs and Substances Act

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Introduction

1. This chapter examines the legislative authorities for examinations and searches, indicators and their use, and types of referrals for customs secondary processing or examination.

Note: Immigration referrals, examinations and searches under the *Immigration and Refugee Protection Act* are discussed in [Part 2, Chapter 1- Primary Questioning and Immigration Referrals](#) and [Part 11, Chapter 7- Temporary Resident Biometrics Program](#) of this manual, as well as [ENF 4 Port of Entry Examinations](#) and [ENF 12 - Search, Seizure, Fingerprinting and Photographing](#).

Legislative Authorities

Customs Act

2. The *Customs Act* clearly outlines the responsibilities of persons entering Canada in presenting themselves and reporting the goods they are importing. The legislative authorities are as follows:

- Section 11 of the Act states that persons must present themselves to a customs office upon entry into Canada.
- Paragraph 12(3) (a) indicates that it is the person's responsibility to report goods in his or her possession or carried aboard the same conveyance as baggage.
- Section 13 of the Act outlines the obligations of persons reporting imported goods to answer truthfully all questions relating to the goods and to present the goods for examination.
- Sections 163.4 and 163.5 of the Act provide the authority for designated officers to enforce *Criminal Code* offences encountered during the normal duties of an officer. In some instances, this will occur during secondary examination.

3. Section 98 of the *Customs Act* is the legislative authority for officers to perform personal searches which involve the disrobement of a person. Subsection 98(1) states:

98 (1) An officer may search

- (a) any person who has arrived in Canada, within a reasonable time after his arrival in Canada,
- (b) any person who is about to leave Canada, at any time prior to his departure, or
- (c) any person who has had access to an area designated for use by persons about to leave Canada and who leaves the area but does not leave Canada, within a reasonable time after he leaves the area,

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if the officer suspects on reasonable grounds that the person has secreted on or about this person anything in respect of which this Act has been or might be contravened, anything that would afford evidence with respect to a contravention of this Act or any goods the importation or exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.

Note: For detailed information on personal searches pursuant to the *Customs Act*, refer to CBSA EN Manual [Part 6, Chapter 6 – Personal Search](#).

4. Section 99 of the *Customs Act* is the legislative authority for officers to examine goods that have been imported or reported for export. Under subsection 99(1) of the Act, the officer can perform the following functions:

- Paragraph 99(1) (a) - examine any goods that have been imported (including conveyances) and open or cause to be opened any package or container of imported goods and take samples of imported goods in reasonable amounts;
- Paragraph 99(1) (b) - examine any mail that has been imported and, subject to this section, open or cause to be opened any such mail that the officer suspects on reasonable grounds contains any goods referred to in the *Customs Tariff*, or any goods whose importation is prohibited, controlled, or regulated under any other Act of Parliament, and take samples in reasonable amounts;
- Paragraph 99(1) (c) - examine any goods that have been reported for export (including conveyances) and open or cause to be opened any package or container of such goods and take samples of such goods in reasonable amounts;
- Paragraph 99(1) (d) - examine the goods and take samples in reasonable amounts where an officer suspects on reasonable grounds that an error has been made in the tariff classification, value for duty or quantity of any goods accounted for under section 32, or where a refund or drawback is requested in respect of any goods under the *Customs Act* or pursuant to the *Customs Tariff*;
- Paragraph 99(1) (d.1) - examine the goods and take samples in reasonable amounts where the officer suspects on reasonable grounds that an error has been made with respect to the origin claimed or determined for any goods accounted for under section 32;
- Paragraph 99(1) (e) - examine the goods and open or cause to be opened any package or container where the officer suspects on reasonable grounds that the *Customs Act* or the regulations or any other Act of Parliament administered or enforced by the officer or any regulations there under have been or might be contravened; and

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- Paragraph 99(1) (f) - stop, board and search the conveyance, examine any goods thereon and open or cause to be opened any package or container thereof and direct that the conveyance be moved to a customs office or other suitable place for any such search, examination or opening where the officer suspects on reasonable grounds that this Act or the regulations or any other Act of Parliament administered or enforced by the officer or any regulations there under have been or might be contravened.

5. Subsection 99(1) authorizes the officer to examine imported goods prior to their release as well as goods that have been reported for export. It also provides the authority under paragraphs (d) and (d.1) for the examination of goods which have already been accounted for but are subject to a refund or drawback claim or for which an error has been made regarding the tariff classification, value for duty, quantity, or origin of the goods.

6. The examination of postal shipments is authorized under paragraphs 99(1)(b), (c), (e), and (f) of the *Customs Act*. For further information on the processing and examination of postal importations, refer to [Part 5, Chapter 9 - Postal Importations](#) of this manual.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

7. Section 15 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) authorizes personal searches when an officer has reasonable grounds to suspect that the person has or is attempting to circumvent the Act. Subsection 15(1) states:

15 (1) An officer may search

- (a) any person who has arrived in Canada, within a reasonable time after their arrival in Canada,
- (b) any person who is about to leave Canada, at any time before their departure, or
- (c) any person who has had access to an area designated for use by persons about to leave Canada and who leaves the area but does not leave Canada, within a reasonable time after they leave the area,

if the officer suspects on reasonable grounds that the person has secreted on or about their person currency or monetary instruments that are of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and that have not been reported in accordance with that subsection.

8. Sections 16 and 17 are the legislative authorities for officers to examine conveyances, baggage and mail for unreported currency or monetary instruments totalling CAN\$10,000 or greater.

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Note: For detailed information on examinations and searches under the *PCMLTFA*, refer to [CBSA EN Manual Part 2, Chapter 2 – Cross-Border Currency and Monetary Instrument Reporting](#).

Types of Referrals

9. There are three basic types of referrals in the traveller stream: mandatory, random and selective.

10. A **mandatory** referral is a decision that an officer makes for further documentation or examination by CBSA or on behalf of other government departments/agencies. Examples of mandatory referrals are provided below:

- Referral to the secondary inspection area for immigration documentation (e.g., visitor record, work permit, etc.);
- Referral to the general office and cashier for payment of duties and taxes on Form BSF715 /BSF715-1 *Casual Goods Accounting Document*;
- Referral to the general office for completion of Form BSF186 , *Personal Effects Accounting Document*, for goods imported by a settler, former resident, or seasonal resident, or as a bequest;
- Referral due to the point of finality not being reached (e.g., a language or communication problem or open declaration where the individual should be given an opportunity to total his/her receipts, etc.);
- Referral on behalf of another government department/agency (e.g., Canadian Food Inspection Agency, Transport Canada);
- There is a lookout on the licence plate or name ;
- Referral because an individual answered in the affirmative to a question while using a NEXUS or CANPASS airport kiosk.

Note: In the event that the point of finality has not been reached at the Primary Inspection Line (PIL), this information must be communicated to the officer at secondary as per local procedures, either orally, by telephone or radio, or in writing via coding on the [E311 CBSA Declaration Card](#) or Form BSF235 *Secondary Referral*

For detailed information on the point of finality, refer to [CBSA EN Manual Part 3, Chapter 3- Reporting, Questioning and Referral](#)

11. A **random** referral, as the name implies, is conducted on a random basis to ensure individuals are complying with all CBSA administered laws and regulations, as well as to gather statistics on levels of compliance. At most locations, random referrals will be computer-generated.

12. A **selective** referral is a referral made by an officer once the point of finality has been reached, and the officer believes that an examination is warranted. During this referral, the officer will use indicators to identify high-risk individuals and goods and to ensure the quality of selective referrals.

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Indicators and their use

13. An “*indicator*” is a sign that indicates, or points to a possibility of, non-compliance with legislative requirements. Indicators, which are fairly constant, have been developed over time based on experiences of officers.

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21. Referral of high risk individuals –

22. In the marine mode, traveller stream, the following applies:

- Cruise Ships - Passengers are fully cleared by the CBSA at the First Port of Arrival (FPOA) in Canada. Cruise ship passengers complete an [E311 CBSA Declaration Card](#) that officers may use to refer the individual to the secondary inspection area for further examination of goods, payment of duties and taxes or for documenting food, plant and animal goods.

Note: For detailed information on cruise ship processing, refer to [Memorandum D2-3-7 Marine Operations - Canada Border Services Agency Processing of Cruise Ships](#)

- Ferry and Tour Boats - The [E311 CBSA Declaration Card](#) is used for all foot pedestrians arriving in Canada for referral from the PIL to the secondary inspection area. For all vehicular traffic on board a ferry, Form [BSF235 Secondary Referral](#) is used, and for all commercial trucks on board a ferry, Form [Y28, Report to Warehouse](#) is used for referral purposes.

23. For further information on reporting, questioning and referral, refer to [CBSA EN Manual Part 3, Chapter 3 - Reporting, Questioning and Referrals](#).

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Introduction

1. The Canada Border Services Agency (CBSA) is responsible for providing integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants that meet all requirements under the program legislation.
2. At the time of entry, persons are required to present themselves to the CBSA and answer truthfully any questions asked by an officer in the performance of his or her duties pursuant to section 11 of the *Customs Act* as well as appear for examination and provide all relevant information and documents as required pursuant to sections 16 and 18 of the *Immigration and Refugee Protection Act* (IRPA). The person is also required, under section 12 of the *Customs Act*, to report all goods and, pursuant to section 13, to answer truthfully all questions relating to those goods.
3. Pursuant to sections 15(1), 19, 21, 22, 23, 39 and 47 of the IRPA and sections 40, 41 and 42 of the *Immigration and Refugee Protection Regulations* (IRPR), officers have the designated authority to:
 - determine whether a foreign national could become a temporary or a permanent resident;
 - allow Canadian citizens, registered Indians and permanent residents to **enter Canada**;
 - direct a person to leave Canada or to return to the United States;
 - allow the withdrawal of an application to enter Canada or refuse the entry to a person who does not satisfy the requirements of the Act;
 - authorize a person to enter Canada for further examination or an admissibility hearing.
4. Officers also have the authority and are expected to enforce provisions of the *Criminal Code*. In some instances, this will occur during primary inspection.
5. In this chapter, we will discuss the Primary Inspection Line (PIL) concept; the primary questioning to be undertaken by the officer; and the referral of persons for immigration secondary examination.

Note: The types of referrals for customs purposes and the authorities for conducting examination and searches are discussed at length in the People Processing Manual (PPM) [Part 10, Chapter 1 - Referrals and Authorities for Examination and Search](#). For information on processing biometrically enrolled foreign nationals at primary see Immigration, Refugees and Citizenship Canada (IRCC) [Enforcement Manual \(ENF\) 4 - Port of Entry Examinations](#) and PPM [Part 11, Chapter 7 – Biometric Collection and Verification for Temporary Residents](#).

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information. In other modes, the [E311](#), *CBSA Declaration Card* and the Primary Inspection Kiosk (PIK) serves this purpose.

13. IPIL Air is available at all major airports and bus locations, as well as select rail, ferry and cruise ship sites. IPIL Air functions include an on-line (real time) interface with ICES and IBAS.

14. **All persons** entering Canada at a site equipped with the IPIL system must be queried in IPIL. Officers **must query each person** (including children) by capturing the information from a machine-readable travel document or by manually keying the person's information. All queries **must** contain surname, given name, citizenship and date of birth. Keying additional fields is optional and will provide a more accurate query response.

15. IPIL queries are to be made only at PIL or other areas designated to perform PIL queries, and only for the purpose of processing people who are physically present. Once information is scanned or manually input in IPIL, the system provides the officers with an immediate system response and identifies whether the person is the subject of a previous enforcement action or a lookout. This information assists the officer in making a release or refer decision for secondary examination. In response to the name query, the IPIL screen displays a maximum of 3 customs responses and a maximum of 5 immigration responses.

Note: Test passports used to ensure proper functioning of document readers are **not** to be used with the application.

Proper Use of IPIL Information

16. Information contained in IPIL is protected, and must only be used by an officer in the performance of his or her duties. Unauthorized use of IPIL for non-employment-related purposes is prohibited. Performing a query in IPIL creates a travel record within Passage History and ICES Traveller History and should only be performed when the person is physically present.

17. Requests for disclosure of information contained in IPIL from other agencies or departments are subject to the provisions of section 107 of the *Customs Act* and are to be handled by the superintendent.

18. Requests by persons for the release of information in IPIL should be referred to the superintendent on duty. A formal request must be submitted under the *Access to Information Act*. For information on filing these requests, refer to Appendix A in [Part 1, Chapter 2](#) of this manual.

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Use of Designated Lanes

19. The use of designated lanes has been implemented at various locations to streamline the movement of people and reduce traffic congestion. Lanes may be designated according to visitor/resident status. Some locations have special lanes dedicated to NEXUS members, as well as flexible lanes, which have the ability to process both NEXUS and non-NEXUS passages depending on demand.

Conducting the Primary Interview

20. In conducting the primary interview, no preferential treatment should be given to employees of the CBSA or to other law enforcement agencies.

21. To facilitate the processing of people and to extend to persons a reasonable opportunity to fulfil their reporting obligations, standard primary questions are used to determine the citizenship and residential status of the person. Depending on their responses, further primary questions will then be asked.

22. The first questions asked in a primary interview, where the [E311](#) card or other form of written declaration is not used, are to determine the citizenship and residential status of the person. These questions are as follows:

- What is your citizenship?
- Where do you live? (or where do you make your permanent home?)

23. In addition, the officer at PIL can ask the person's name (for example, to determine whether he or she is the subject of a lookout).

24. For many people, the experience of undergoing a primary interview is a daunting one, even if they have nothing to declare. The most successful PIL interviewing techniques combine professionalism with common courtesy. For example, to ensure professionalism in appearance, the uniform, badge and name tag are to be worn in accordance with the [CBSA Uniform Policy and Standards of Appearance](#).

25. The security of lookout information must also be maintained, and any lookouts must be kept strictly out of public view.

26. When conducting the interview, the officer at PIL should first greet the person, as a courtesy, before beginning the primary questioning. In PIL lanes and booths offering bilingual service, the officer must ensure that an active offer of service is made in both official languages.

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27. The tone of the interview is important. Officers at PIL are encouraged to maintain a courteous and impartial tone. It is also important that the officer at PIL maintain eye contact with the traveller throughout the interview. This will emphasize the importance of the questions being asked.

28. In conducting the primary questioning, the officer at PIL must ensure, for immigration purposes, that the person is admissible to Canada. It is important to note that section 37 of the IRPR provides that an “immigration point of finality” may be revisited at any time prior to the person leaving the port of entry. Regardless of whether the person’s passport has been stamped or the person has been granted permanent residence status, the decision regarding the person’s admissibility is not final and may be revisited as long as the requirements of section 37 of the IRPR have not been met.

29. Primary questioning is also used to ensure that a “customs point of finality” is reached at PIL by extending to the person every reasonable opportunity to make a true and complete report of him or herself and the goods he or she is importing. Once this opportunity has been extended, a customs point of finality has been reached and the officer must decide whether to authorize entry or to refer the person for secondary examination. For detailed information on reaching the point of finality, refer to [Part 10, Chapter 1](#) of this manual.

30. When the primary questioning is completed, the officer should conclude the interview by instructing the person to proceed to the appropriate area. This ensures that the person knows when the interview is finished and they can proceed.

Note: The exception to this would be were an officer encounters a person suspected of being in contravention of the *Criminal Code*, for example, a person suspected of being under the influence of alcohol or a drug, and is operating or having care or control of a vehicle, vessel, aircraft, or railway equipment. In such cases, the officer would follow [CBSA Enforcement \(EN\) Manual Part 6, chapter 7 – Criminal Code Offences](#).

Must Appear for an Examination for Immigration Purposes

Note: Refer to IRCC Manual [ENF 4, Port of Entry Examination](#) for detailed information concerning primary and secondary immigration examinations of:

- Canadian Citizens;
- Registered Indians;
- Permanent residents;
- Permanent residence applications;
- Foreign nationals; and
- Temporary resident permit holders.

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31. Subsection 15(1) of the IRPA combined with section 28 of the IRPR authorizes an officer to proceed with an examination where a person seeks entry into Canada. Subsection 18(1) of the IRPA requires that every person seeking entry to Canada must appear for examination in order to determine whether they have a right to enter Canada or whether they are or may become authorized to enter and remain in Canada. For immigration purposes, persons seeking entry to Canada generally fall in the following categories:

(1) **Persons that enter Canada by right** (s. 19 of the IRPA)

- Canadian citizens
- Registered Indians
- Permanent residents (subject to s. 27 of the IRPA including residency obligations under s. 28 of the Act)

(2) **Persons who shall be permitted entry to Canada by law** (s. 39 of the IRPR)

- Refused entry elsewhere – persons who have been returned to Canada as a result of the refusal of another country to allow that person entry
- Persons returning to Canada under a transfer order made under the *Mutual Legal Assistance in Criminal Matters Act* (MLAT)
- Protected persons with Canadian refugee travel documents

(3) **All other foreign nationals may be authorized to enter Canada**

- Persons seeking to become temporary residents (s. 22 of the IRPA)
- Persons seeking to become permanent residents (s.21 of the IRPA)

32. In the case of **Canadian and United States citizens** and **permanent residents**, the officer at PIL may accept an **oral declaration of citizenship** if the person is able to satisfy the officer of his or her citizenship. However, the officer may also request identification in order to determine admissibility.

Note: A summary of the acceptable documents for establishing admissibility is found in Appendix B of this chapter. For detailed information on documentary requirements for travel and entry to Canada, refer to IRCC [OP 16 – Passport and Travel Documents](#).

33. Persons entering Canada whose status or identity is in doubt should be referred to immigration secondary.

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Passport Requirements for Foreign Nationals

Note: Pursuant to subsection 2(1) of the IRPA, “foreign national” means a person who is not a Canadian citizen or a permanent resident, and includes a stateless person.

34. In accordance with subsection 52(1) of the IRPR, all foreign nationals seeking entry to Canada must be in possession of a passport or travel document, which guarantees re-entry to the country of issuance, with the following exceptions under subsection 52(2):

- United States citizens;
- Foreign nationals seeking entry from the United States or Saint-Pierre and Miquelon who have been lawfully admitted to the United States for permanent residence;
- Residents of Greenland seeking to enter Canada from Greenland;
- French citizens who reside permanently in Saint-Pierre and Miquelon seeking entry to Canada from Saint-Pierre and Miquelon;
- Armed forces personnel entering Canada to carry out their official duties pursuant to the *Visiting Forces Act*. (Civilians are not included);
- Persons seeking to enter Canada as members of a crew who hold a seafarer’s identity document issued under the International Labour Organization conventions and are members of the crew of the vessel that carries them to Canada; and
- Persons who are seeking to enter Canada as, or in order to become, members of a crew of a means of air transportation and who hold an airline flight crew licence or crew member certificate issued in accordance with International Civil Aviation Organization specifications.

Note: “Member of a crew” is defined in subsection 3.1(a) of the IRPR; “vessel” is defined in section 2 of the IRPR.

Note: Persons who have been lawfully admitted to the United States for permanent residence are exempt from passport requirements when seeking to enter Canada from the United States or Saint-Pierre and Miquelon. A temporary resident visa (TRV) is not required if they can prove that they were lawfully admitted to the United States for permanent residence and are in possession of their Permanent Resident Card or can provide other evidence of permanent residence.

35. There is no legislative requirement under IRPA for permanent residents of Canada to be in possession of a passport when seeking entry to Canada. However, an officer must be satisfied of their permanent resident status in Canada to allow their entry. If permanent residents are in possession of a valid passport, the passport should be stamped and annotated “RR” for Returning Resident.

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Other Travel Documents

36. The following are other travel documents, which may be encountered by the officer:

- United Nations (UN) *Laissez-Passer* (e-UNLP) - The UN issues a red or light blue-covered machine readable passport-like booklet to some of its employees. Canada recognizes it as a legitimate travel document. However, it does not entitle its holder to any special privileges and he or she must have a temporary resident visa if required.
- Canadian Refugee Travel Document - This light blue-covered, machine-readable passport-like booklet issued Passport Canada to persons who have been recognized as Convention refugees and are either permanent residents or hold a temporary resident permit. They do not require additional documents.
- Canadian Certificate of Identity - This orange-brown-covered, machine-readable passport-like booklet issued by Passport Canada to permanent residents who are unable to obtain a passport from their country of nationality. They do not require additional documents.
- Canadian Temporary Passport - This white-covered, machine-readable passport-like, booklet is issued by a Canadian mission abroad for urgent, proven travel situations or residency requirements. It is designed for interim use only and not intended to replace a regular, diplomatic or special passport.

Temporary Resident Permits

37. A temporary resident permit is a document that is issued to foreign nationals who normally would not be admissible (i.e. an individual with a past criminal record for which a pardon has not been granted) to allow entry to Canada for compelling reasons.

38. Visa offices no longer issue temporary resident permits on IMM 1442B documents. Visa offices provide the foreign national with a letter of introduction to present at a port of entry upon arrival in Canada. Furthermore, they will generate the permit electronically in the Global Case Management System (GCMS) for issuance at the port of entry.

Temporary Resident Visa

39. Subsection 11(1) of the IRPA requires foreign nationals to apply for a TRV before entering Canada. A TRV indicates that the foreign national has been pre-screened by a visa officer and that this officer is satisfied that the visa holder meets the requirements for entry onto Canada at the time of the issuance of the visa.

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Temporary Resident Visa Exemptions

40. Subsection 7(2) of the IRPR exempts certain foreign nationals from the requirement to obtain a TRV. These include:

- Foreign nationals who hold a temporary resident permit issued under ss.24(1) of the IRPA;
- Foreign nationals who are authorized under the IRPA or its Regulations to re-enter Canada to remain in Canada; and
- Foreign nationals exempt under s.190 of the IRPR.

41. A complete list of TRV exemptions for foreign nationals is set out in s. 190 of the IRPR which includes:

- List of visa-exempt countries and territories [ss.190(1)];
- Other document holders [ss. 190(2)];
- Special categories of persons with a specific purpose of entry [ss. 190 (3)].

Note: For detailed information concerning TRVs and temporary resident permits, refer to IRCC Manual ENF 4, Port of Entry Examination and OP 11- Temporary Residents.

42. Paragraph 190(3)(c) and subsection 190(4) of the IRPR provides the legislative basis for the Transit Without Visa (TWOV) program and the China Transit Program (CTP).

TWOV

43. The TWOV program allows nationals of Indonesia, Philippines, Thailand and Taiwan (ordinary passport holders issued by the Ministry of Foreign Affairs in Taiwan that contain the personal identification number do not require a TRV to visit Canada) to transit Canada at the Vancouver International Airport, Pearson International Airport (Terminal 1 only), the Pierre Elliott Trudeau International Airport, the Calgary International Airport or the Winnipeg International Airport on their way to and from the United States without a Canadian TRV if they meet the following requirements:

- Hold a valid passport issued by their country of origin;
- Hold a valid United States visa when travelling to the United States; and

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- Travel to Canada on one of the following approved airlines:

- | | | |
|--------------------|---------------------------|-------------------------|
| ○ Air Canada | ○ Cathay Pacific | ○ Jazz Aviation |
| ○ Air Canada Rouge | ○ China Eastern Airlines | ○ Philippine Airlines |
| ○ Air China | ○ China Southern Airlines | ○ Sky Regional Airlines |
| ○ Air Georgian | ○ Hainan Airlines | ○ WestJet |
| | | ○ XiamanAir |

CTP

44. The CTP allows nationals of the People's Republic of China to transit Canada at the Vancouver International Airport, Pearson International Airport (Terminal 1 only), the Pierre Elliott Trudeau International Airport, the Calgary International Airport or the Winnipeg International Airport on their way to and from the United States without a TRV if they:

- Hold a valid passport issued by the People's Republic of China;
- Hold a valid United States visa when travelling to the United States;
- Arrive on a direct non-stop flight originating from one of the following cities; and

- | | | |
|-------------|-----------------------|------------|
| ○ Beijing | ○ Harbin | ○ Shanghai |
| ○ Chengdu | ○ Manila | ○ Shenyang |
| ○ Fuzhou | ○ Nagoya | ○ Taipei |
| ○ Guangzhou | ○ Osaka | ○ Tokyo |
| ○ Hong Kong | ○ Seoul (South Korea) | ○ Xiamen |

- Travel to the Pierre Elliott Trudeau International Airport on an Air Canada flight, or arrive at the Vancouver International Airport, Pearson International Airport (Terminal 1 only), the Calgary International Airport or the Winnipeg International Airport on one of the approved airlines:

- | | | |
|--------------------|---------------------------|-------------------------|
| ○ Air Canada | ○ Cathay Pacific | ○ Jazz Aviation |
| ○ Air Canada Rouge | ○ China Eastern Airlines | ○ Philippine Airlines |
| ○ Air China | ○ China Southern Airlines | ○ Sky Regional Airlines |
| ○ Air Georgian | ○ Hainan Airlines | ○ WestJet |
| | | ○ XiamanAir |

Note: Please refer to the [Transit Without Visa Program and China Transit Program, Standard Operating Procedures](#) for detailed program eligibility criteria and processing of travellers.

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Re-entry of Persons with a Work, Study or Temporary Resident Permit

45. To authorize a person already in possession of a valid work, study or temporary resident permit to re-enter Canada, the officer at PIL will simply re-stamp the passport and indicate the same expiry date as shown on the permit.

Electronic travel authorization (eTA)

46. An eTA is an entry requirement for all visa-exempt, non U.S. foreign nationals travelling to Canada by air. An eTA is a paperless document electronically linked to a traveller's passport that will have to be obtained prior to travelling to Canada by air. Subsection 7.1(1) of the IRPR requires all foreign nationals from non-visa-required countries to obtain an eTA before entering Canada.

Note: For details concerning eTAs, refer to [IRCC Manual ENF 4, Port of Entry Examinations](#).

Primary Questioning of Non-Residents

47. Where the [E311](#) card or other form of written declaration is not used, once the citizenship and residential status of the person have been determined, the following questions would be asked of **non-residents**:

- What is the purpose of your trip?
- How long do you intend to stay in Canada?
- What goods do you have with you other than your own clothing?
- Do you have any alcohol or tobacco products?
- Do you have any gifts for anyone in Canada?
- Are you importing any food, plants, animals or related products?
- Are you bringing any firearms or other weapons into Canada?
- Are you bringing cannabis or goods containing cannabis into Canada?
- Are you in possession of currency or monetary instruments of a value equal to or greater than CAN\$10,000?

48. For non-residents who are **not** Canadian citizens, the first two questions relating to “purpose of the trip” and “length of stay” are **mandatory** for both immigration and customs purposes. The questions relating to the goods being imported are required for customs purposes.

49. For non-residents who are Canadian citizens, these questions are mandatory for **customs purposes only** to determine which tariff item **the goods** are to be classified under. For example, whether the goods

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are eligible for duty and tax-free entry under tariff item No. 9803.00.00 (refer to Memorandum [D2-1-1](#), *Temporary Importation of Baggage and Conveyances by Non-Residents*).

50. For **immigration purposes**, Canadian citizens are admissible into Canada as a matter of right. If an officer is questioned as to why a non-resident Canadian citizen is being asked the purpose of their trip, and their intended length of stay, the person should be advised that these questions serve to determine if they may benefit from the duty and tax relief on imported goods.

Note: If an officer is not satisfied that the individual is a Canadian citizen, the person should be referred to immigration secondary examination.

51. Supplementary primary questioning by the officer at PIL may also be required in some cases. For example, if a non-resident indicates he or she is entering Canada for business purposes, it would be appropriate to ask the following questions:

- Do you intend to be employed or seek employment in Canada? (For immigration purposes, where the person is not a Canadian citizen, a permanent resident of Canada, or a registered Indian)
- Are you importing any commercial or business goods? (For customs purposes)

Employment for Immigration Purposes

52. For the purposes of the IRPR, “work” means an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market. (refer to s. 2 of the IRPR)

- **Wages or Commission:** If a person performs an activity that will result in them being paid or receiving remuneration, they will be engaging in work. This includes salary or wages paid by an employer to an employee, remuneration or commission received for fulfilling a service contract, or any other situation where a foreign national receives payment for performing a service.
- **Activity that competes directly:** Officers should consider whether there is entry into the labour market.
 - Will they be performing an activity that a Canadian or permanent resident should really have an opportunity to do?
 - Will they be engaging in a business activity that is competitive in the marketplace?
- **Examples of work include but are not limited to:**
 - Unpaid employment undertaken for the purpose of obtaining work experience, such as an internship or practice normally accomplished by a student.

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- A foreign technician entering Canada to repair machinery, or otherwise fulfil a contract, even when they will not be paid directly by the Canadian company for whom they are completing the work.

53. Although foreign nationals are deemed to be working for immigration purposes, they can be exempted from having a work permit. While a complete list of these exemptions can be found in sections 186 and 187 of the IRPR, the following are the most common categories:

- A business visitor under NAFTA that meets the following conditions:
 - is a United States or Mexican citizen (permanent residents/temporary workers are not entitled);
 - visiting Canada for business-related activities (i.e. is not joining the labour market);
 - whose primary salary is paid outside Canada; and
 - whose principal place of business is maintained outside Canada.

Note: Although after-sales service representatives are exempted from a work permit under NAFTA only, they are subject to a mandatory immigration referral.

- Foreign nationals purchasing or selling goods or services for a foreign business, not including sales to the public;
- Persons receiving or giving training within a parent or subsidiary company which employs them outside of Canada;
- An accredited diplomat to Canada;
- Military personnel under the *Visiting Forces Act*;
- Assisting a congregation or group in the achievement of its spiritual goals and whose main duties are to preach doctrine and provide spiritual counselling;
- Employees of a foreign news company reporting on Canadian events;
- Attending a business meeting with a branch of his or her company, union or other organization. These types of meetings include inspections and company audits in Canada;
- Guest speakers;
- Commercial speakers or seminar leaders delivering a seminar that lasts no longer than five days;
- Professional Wrestlers (e.g. WWE);
- Visiting athletes playing as individuals, for non-Canadian-based teams or Canadian amateur teams;
- Athletes seeking entry to Canada for the purpose of try-outs only;
- Referees and judges for international sporting events or competitions;
- Street performers during festivals;
- Foreign film producers or individuals purchasing or renting services of a studio in Canada;
- Convention organizers;
- Examiners and evaluators of research proposals, projects or theses;
- Expert witnesses or investigators;

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- Crew members employed by a foreign company aboard a means of transportation that a foreign-owned and not registered in Canada, and is engaged primarily in international transportation;
- Persons coming to Canada in emergency situations for the preservation of life or property; and
- Foreign nationals who are registered Indians.

Primary Questioning of Returning Residents

54. In modes where the E311 card or other form of written declaration is not used, once the citizenship and residential status of the person have been determined, the following questions would be asked of **returning residents of Canada**:

- What is your status in Canada? (to residents who are not Canadian citizens **only**)
- How long have you been absent from Canada?
- What is the total value of all goods that you have either purchased, acquired or received, including gifts, while outside Canada?
- Are you importing any commercial or business goods?
- Are you importing any food, plants, animals or related products?
- Did you make any purchases from a duty free store?
- Are you bringing any firearms or other weapons into Canada?
- Are you bringing cannabis or goods containing cannabis into Canada?
- Are you in possession of currency or monetary instruments of a value equal to or greater than CAN\$10,000?

Note: As indicated in Part 2, Chapter 3, of the CBSE Enforcement Manual, it is also appropriate to ask returning residents if they have any firearms or other weapons in their possession or if firearms form part of their declaration.

55. Supplementary primary questioning by the officer at PIL may also be required in some cases. For example, if a resident indicates he or she has been absent from Canada for 7 days or more, the officer should ask whether they have any unaccompanied goods.

Note: For information on the obligation to report and document unaccompanied goods on Form BSF192 (formerly E24) - *Personal Exemption CBSE Declaration (unaccompanied goods)* at the time of arrival, refer to D2-3-1- Personal Exemptions for Residents Returning to Canada.

56. A summary of the primary questions asked of non-residents and returning residents is found in Appendix A of this chapter.

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Cross Border Currency Reporting

57. Refer to Part 2, Chapter 2 of the [CBSA Enforcement Manual](#) for details concerning the Cross Border Currency Reporting Program.

Additional and Direct Questioning

58. The questions outlined in this chapter are the standard primary questions. On occasion, more detailed questioning will be necessary. For information on additional and direct questioning, refer to Part 3, Chapter 3 of the [CBSA Enforcement Manual](#).

Immigration Secondary Referral List

59. The Immigration Secondary Referral List contains the categories of persons who are mandatory referrals for an immigration secondary examination. Officers at PIL may refer anyone else whom they determine should be examined in more detail.

Note: For additional information concerning the categories of people who are mandatory referrals for an immigration secondary examination, refer to IRCC Coding Manual [COD 7 - Canada Border Services Officer Reference Booklet](#).

Immigration Secondary Referral List	
General	
Inadmissible persons	Persons considered to come within the inadmissible classes pursuant to sections 34 to 42 of the IRPA on the following grounds: security, human or international rights violations, criminality, organized criminality, health, financial reasons, misrepresentation, non-compliance with the IRPA, and inadmissible family members.
Criminality	Persons, other than Canadian citizens (includes Canadian registered Indians) who have been charged and/or convicted of a criminal offence. (i.e. Committed an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.) [paragraphs 36(1)(c) and 36(2)(c) of the IRPA]
Suspect claims to Canadian, registered Indian or PR status	Persons claiming to be Canadian citizens, registered Indians or permanent residents of Canada, whose citizenship or status is doubtful, based on questioning and documentation submitted.

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Immigration Secondary Referral List	
Refusal to answer questions	Persons whose admissibility cannot be determined because they are unable or refuse to answer questions. The inability to communicate in English, French or any other language does not justify referral.
Refused entry into another country	Persons, other than Canadian citizens, who have been refused entry into another country.
Suspect documentation	Persons whose citizenship, passport, travel document or visa may be in question.
Immigration Lookouts	Persons whose referral has been specifically requested by immigration.
Deportees and extradition cases	Persons who are deported or extradited to Canada, and foreign nationals coming forward to attend a trial, whether escorted or not.
Referral from customs secondary examination	Persons, other than Canadian citizens, concerning whom, as a result of a customs secondary examination, there is reason to believe they are, or may be, involved in an illegal activity.
Canadian Citizens	
Canadian citizens born abroad on first entry	Persons coming forward for the first time when born abroad of a Canadian parent and who are not in possession of documentary evidence of citizenship.
Emergency passports	Persons in possession of an emergency passport issued by a Canadian diplomatic mission abroad to facilitate their return to Canada.
Permanent Residents	
Document <i>bona fide</i> in question	Persons who have presented proof of permanent residence but are unable to provide documentary evidence that they are the person described in the document.
PRs with extended absence from Canada	Persons who have been outside Canada for more than three years in the preceding five-year period (except persons who received their PR status less than five years ago).
Travel documents issued to persons appealing a decision that they have lost permanent resident status	Permanent residents returning to Canada to attend an appeal of a decision made outside of Canada that they have lost their permanent resident status (visa codes RX or RA).
Holders of PR card with one-year validity	Permanent residents in possession of a permanent resident card reflecting a validity date of one year. (The validity period will be the first line, last number of the bar code on the back of the card.)
Foreign Nationals Seeking to Become Permanent Residents	
Permanent resident applicants	Persons seeking permanent resident status, whether in possession of documentation or not.
Refugee claimants	Persons claiming refugee status or political asylum.

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Immigration Secondary Referral List	
Visitors	
Foreign nationals staying longer than 6 months	Persons intending to remain in Canada for more than six months.
Foreign nationals seeking medical treatment or who appear ill	Persons coming forward to seek or undergo medical treatment and persons who are, or appear to be, ill.
Persons under escort	Persons transiting through Canada while under escort.
United States visa seekers	Foreign nationals coming to Canada for the purpose of obtaining a PR visa for the United States.
Minor children	Children, accompanied or alone, who arouse concern about the purpose of their trip to Canada, their welfare or the parental relationship of an accompanying adult (e.g. under “Our Missing Children” Program).
Foreign deportees	Persons who are under removal proceedings from any country.
Foreign workers on first entry	Persons intending to seek or take employment who are entering Canada for the first time (except those persons who fall within sections 186 and 187 of the IRPR, and those who are in possession of a valid and subsisting work permit).
Foreign students on first entry	Persons intending to follow any course of study who are entering Canada for the first time (except those persons in possession of valid and subsisting study permits, and those persons intending to study in Canada for a period of less than six months).
NAFTA (after sales service personnel)	Persons seeking entry under NAFTA provisions regarding the entry of after-sales service personnel (except persons returning to Canada to perform continuing after-sales services, whose entry for that purpose has already been documented on a Visitor Record, the validity of which covers the period for which the person seeks entry).
Pre-screened applicant for the issuance of an immigration control document at port of entry	Persons seeking entry for the purpose of work, study or to enter as a temporary resident permit holder for the first time and who are in possession of a letter enabling them to obtain that permit at a port of entry.

Temporary Resident Permit Holders (Issued to persons who are inadmissible to Canada)	
Temporary resident permit holders	Permit holders who are arriving for the first time in Canada, or concerning whom there is a doubt as to their identity, or whose permit does not entitle them to re-enter Canada.

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Referrals for Medical Reasons

60. As noted in the table above, the officer at PIL may refer foreign nationals who are or appear to be ill to immigration secondary. The following foreign nationals will be referred for medical reasons:

- could be a danger to public health or safety because of their medical condition (e.g., tuberculosis);
- may have a condition which might cause excessive demands on Canada's medical/social services.

61. Foreign nationals who are assessed by an officer as likely to be a danger to public health or safety are inadmissible under paragraph 38(1)(a) or (b) of the IRPA. Such persons need not be offered an opportunity to demonstrate that they can meet the costs of treatment unless consideration is being given to the issuance of a temporary resident permit to allow the person to enter Canada despite the potential danger to public health or safety. For example, a person suffering from tuberculosis would remain inadmissible even if he or she made all of the arrangements for assuming the costs of medical treatment while in Canada.

62. With respect to foreign nationals who may cause excessive demands on Canada's medical/social services, officers should adopt a practical approach based on visual risk assessment, common sense and experience. When faced with a person who appears ill, an officer should ask himself or herself: "Should this person be travelling?" When officers at PIL encounter foreign nationals who are obviously seriously ill, either physically or mentally, they should refer them for a secondary immigration examination. Examples would include foreign nationals who:

- are obviously in need of immediate medical attention;
- act abnormally;
- have incoherent speech (other than by reason of a disability); and
- are on a stretcher.

63. Persons living with HIV/AIDS do not generally represent a danger to public health or safety pursuant to paragraphs 38(1)(a) or (b) of the IRPA and would therefore be **admissible** to Canada. For the vast majority of short-term visits by persons living with HIV/AIDS, the excessive demand criterion would **not** likely be invoked. If the excessive demand criterion is invoked, it will be in circumstances where there is reason to believe that the foreign national will need some form of medical treatment while in Canada (i.e., is obviously ill). In such cases, it will be up to an officer to determine the likelihood of the foreign national requiring hospitalization while in Canada. It would be rare that a foreign national living with HIV/AIDS would need to be referred for a medical examination and rarer still that such a person would be assessed as medically inadmissible.

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Primary Questioning in the Highway Mode

64. In conducting the primary interview in the highway mode, the officer at PIL must ensure that persons arriving in Canada are given a reasonable opportunity to make a full and complete declaration. To this end, questioning styles such as “Anything back?” for returning residents or “Where to today?” for non-residents are to be avoided.

65. When the driver makes a declaration on behalf of all occupants of the vehicle such as in the case of a family, the officer must make certain that this includes **all** goods that are being imported by each person in the vehicle.

66. In the case of commuter traffic, persons who travel back and forth on a regular basis may assume a “familiar” tone when being interviewed or may think they are entitled to expedited or special service. While the full range of questioning may not be necessary for commuters (i.e., citizenship and residential status), officers must still ensure that the person is questioned regarding any goods being imported and that any accompanying passengers are also interviewed.

67. In the case of commercial vehicles entering Canada, drivers of these vehicles are treated as travellers and are subject to normal primary questioning. They must be admissible for immigration purposes before they are allowed to enter Canada. Drivers of commercial vehicles must declare all goods they are importing for themselves. As well, they must also report the commercial goods they are transporting by presenting the required documentation.

68. In the event that a person is unable to respond to primary or supplementary questions due to a language problem, local procedures should be followed to obtain the services of an interpreter.

Primary Questioning in the Air Mode

69. In the air mode, the E311 card has been developed to facilitate the processing of people by allowing them to make their declaration in writing prior to arrival at PIL. The E311 card has instructions for completion that includes personal exemptions; alcohol and tobacco limits.

70. The E311 cards are distributed by flight attendants prior to arrival. Passengers are advised by flight attendants reading from the text of the Form E353 to complete the E311 card in advance and to present it to the CBSA upon arrival.

71. The officer at PIL will review the E311 card and determine the immigration status of the person through the declaration of citizenship made on the card and the identification presented by the person, and may ask for clarification where required. Officers should ensure that they do not ask the identical questions as in the E311 card.

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72. Where a person states that he or she is a citizen of another country but the E311 card indicates a Canadian place of residence, the person's immigration status should be confirmed by asking "What is your status in Canada?" and by reviewing any applicable documentation such as the permanent resident card.

73. The E311 card contains fields for visitors to declare the purpose of their visit and the duration of their stay. Supplementary questioning will be required in certain cases. For example, if a non-resident indicates that the primary purpose of the visit is for business purposes, it will then be necessary to ask the person whether he/she plans to seek employment in Canada for purposes of determining whether a referral to immigration secondary is required.

74. The instructions to the E311 card indicate which sections of the card are to be completed by the visitor or resident. Each person is responsible for his or her own declaration. There is a signature requirement for persons who are 16 years of age and older. For persons under the age of sixteen, an accompanying parent or guardian should sign the card.

75. There is a multilingual leaflet called CE311, Translation of the CBSA Declaration Card, available to the airlines, which provides instructions on completion of the E311 card in the languages most commonly used by interpreter services at international airports in Canada. These languages are: Italian, Chinese, Polish, Japanese, German, Spanish, Portuguese, Punjabi, Dutch, Korean, Inuktitut, Arabic and Hindi. For further information, refer to Memorandum D2-5-7, E311 Customs Declaration Card, and Multilingual Leaflet CE311, Translation of the Customs Declaration Card. In the event that a person is unable to complete the E311 card or respond to supplementary questions due to a language problem, local procedures should be followed to obtain the services of an interpreter.

76. Some people may appear before the officer at PIL with an incomplete E311 card. There may be legitimate reasons for the failure to complete the card, such as the level of literacy of the person or a misunderstanding as to the procedures at CBSA. The officer should assist the person by conducting an oral interview and noting the answers in the appropriate fields of the E311 card.

77. When the person is unable to complete the E311 card because of a disability, an officer should assist the individual. If this cannot be accomplished at primary, the person should be directed to the secondary area for assistance.

78. If a person refuses to complete or sign the E311 card, the officer at PIL should avoid confrontation, conduct an oral interview and note the answers on the card in the appropriate fields. As stated in the Customs Enforcement Manual, Part 3, Chapter 3: "For the point of finality to be reached, **it is not necessary** to have a person sign or complete any document regarding their declaration or admissibility."

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Note: The [E311](#) card can also be used in the marine (cruise ships/ferries) and rail modes, as well as to facilitate the clearance of buses.

Primary Inspection Kiosks (PIK)

79. At PIK-enabled airports, travellers will make their declaration in writing by answering on screen primary questions. While travellers arriving in Canada at these airports will use a kiosk to complete their declaration, some exceptions will apply where an oral interview will be conducted. These exceptions are:

- Ineligible travellers including:
 - Unaccompanied children under the age of 16
 - Travellers with non-machine readable travel documents
- Foreign diplomats
- Travellers who refuse or are unable to use the kiosk or require accessibility support
- A kiosk outage

Note: During the oral interview, the questions of non-residents and returning residents outlined in Appendix A would be asked.

Lost Passports and Other Documents

80. On occasion, passports or other identification documents are left behind in the CBSA's area. Procedures for handling these documents are outlined in Memorandum R2-6-9, *Lost and Found Passports and Other Documents*.

81. Persons making inquiries with CBSA concerning lost passports for which the CBSA office has no record should be advised to report the loss immediately to the Passports Office at 1-800-567-6868 or visit the [Passport Canada Web site](#) for additional ways of contacting them.

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- b) wear a CBSA-provided personal flotation device at all times while working on or near the water, the side of a dock/wharf or on a boat;
 - c) ensure proper tools are available to conduct the examination;
 - d) complete a risk assessment; for more information, see the definition of 'risk assessment' in the glossary of the [CBSA Enforcement Manual](#)
 - e) ensure their communications equipment is functional and adequate to maintain radio communication with other/support officers throughout the entire clearance process;
 - f) contact the POE office to inform of the time of arrival;
 - g) keep the POE office informed of the progress of examinations;
 - h) have scheduled check in calls for high risk situations;
 - i) ensure that it is safe to board the boat; and
 - j) review the verification request package issued by the TRC for boaters that reported through the TRC.
24. If duty and taxes are payable, and were not collected by the TRC at the time of the phone call, the officer will obtain the traveller's VISA or MasterCard number and expiration date along with the mailing address. Duty and/or taxes will be charged to the credit card and a receipt will be mailed to the traveller as proof of payment.
25. Where duty and taxes are payable but the traveller does not have a credit card, [Form K23A, Invoice](#), will be prepared and sent to the traveller, who will be instructed to make payment at their local CBSA office. The CBSA office where the amount is paid is to issue a [Form K21, Cash Receipt](#), to the traveller and send a copy of the acquitted K23A to the TRC where it will be matched with the Passenger Declaration screen print for filing purposes. For more information, see [Standard Operating Procedures for the Telephone Reporting Centre](#)
26. In the case of boaters who reported through the TRC, once the examination is complete, the verification officer must return the results portion of each verification request package to the TRC in a timely manner for input into the TRC System (TRCS). This will close the passage and ensure that traveller/conveyance data is kept up to date.
27. Verification officers with access to the TRCS are to enter the examination results and details directly in the system thereby acquitting the passage directly.

Search of the boat

28. A search of the boat, or any part thereof, and examination of luggage are only to be undertaken after the primary examination is completed and point of finality is reached. For health and safety purposes, border services officers should always work in pairs while on board a boat.

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36. Depending on the circumstances, the boaters may be cleared over the phone, the operator may be requested to await the arrival of a CBSA officer at that site, or the operator may be requested to proceed to the nearest designated marina at the first opportunity.

Special Clearance Procedures for International Events

37. On occasion, the CBSA may be asked to facilitate the clearance of participants in an international event at a location that is not a CBSA designated site/marina, such as a swimming or boat race. In consultation with the International Events and Horizontal Partnerships Unit (Operations Branch) at Headquarters, such requests should be evaluated on their own merit. CBSA presence at non-designated locations could be subject to cost-recovery charges, at the discretion of the regional office.

38. If the event organizer is willing to provide advance information, the following procedures should be followed:

- Seven days in advance, the event organizer will provide the CBSA regional office with a list of participants' names, dates of birth, citizenship and telephone contact numbers.
- This information would be screened through the CBSA databases and risk assessed in order to determine the individuals' admissibility.
- In the event that additional information is required, or if a person is determined to be inadmissible into Canada, the CBSA will contact the individual directly, rather than the organizer, thereby respecting privacy.
- The CBSA will provide the organizer with a list of approved participants.
- On the day of the event, the CBSA may be present to facilitate and/or monitor the event. If the list is intended and approved to constitute presentation and report to CBSA there would be no need for additional reporting on the day of the event.

39. If the event organizer does not provide advance information of participants, officers should be present onsite at the event to conduct the clearances.

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APPENDIX A

Summary of Primary Questioning

Primary Questions Asked of Non-Residents

- What is your citizenship?
- Where do you live? (or where do you make your permanent home?)

In addition, the officer at PIL can ask the person's name (for example, to determine whether he or she is the subject of a lookout).

- What is the purpose of your trip? *See Note 1.*
- How long do you intend to stay in Canada? *See Note 1.*
- What goods do you have with you other than your own clothing?
- Do you have any alcohol or tobacco products? *See Note 2.*
- Do you have any gifts for anyone in Canada? *See Note 2.*
- Are you importing any food, plants, animals or related products?
- Are you bringing any firearms or other weapons into Canada?
- Are you bringing cannabis or goods containing cannabis into Canada?
- Are you in possession of currency or monetary instruments of a value equal to or greater than CAN\$10,000?

Notes:

1. For non-residents who are **not** Canadian citizens, the first two questions relating to "purpose of the trip" and "length of stay" are **mandatory** for both immigration and customs purposes. For non-residents who are Canadian citizens, these questions may still be asked for **customs purposes only** to determine which tariff item **the goods** are to be classified under. For example, whether the goods are eligible for duty and tax-free entry under tariff item No. 9803.00.00 (refer to Memorandum D2-1-1, *Temporary Importation of Baggage and Conveyances by Non-Residents*).

For **immigration purposes**, Canadian citizens are admissible into Canada as a matter of right. If an officer is questioned as to why a non-resident Canadian citizen is being asked the purpose of their trip, and their intended length of stay, the person should be advised that these questions serve to determine if they may benefit from the duty and tax relief on imported goods.

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2. All of the above questions would be asked during normal or average traffic periods or when a person is being referred to secondary. However, questions concerning alcohol/tobacco and gifts may be omitted at the discretion of the superintendent during peak volume periods. The superintendent will continue to monitor the traffic volume and advise the PIL staff to return to a normal level of questioning as the traffic subsides.

3. Supplementary primary questioning by the officer at PIL may also be required in some cases. For example, if a non-resident indicates he or she is entering Canada for business purposes, it would be appropriate to ask the following questions:

- Do you intend to be employed or seek employment in Canada? (For immigration purposes, where the person is not a Canadian citizen, a permanent resident of Canada, or a registered Indian)
- Are you importing any commercial or business goods? (For customs purposes)

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Primary Questions Asked of Returning Residents

- What is your citizenship?
- Where do you live? (or where do you make your permanent home?)

In addition, the officer at PIL can ask the person's name (for example, to determine whether he or she is the subject of a lookout).

- What is your status in Canada? (to residents who are not Canadian citizens **only**)
- How long have you been absent from Canada? *See Note 3.*
- What is the total value of all goods that you have either purchased, acquired or received, including gifts, while outside Canada?
- Are you importing any commercial or business goods? *See Note 2.*
- Are you importing any food, plants, animals or related products? *See Note 2.*
- Did you make any purchases from a duty free store? *See Note 2.*
- Are you bringing any firearms or other weapons into Canada? *See Note 1.*
- Are you bringing cannabis or goods containing cannabis into Canada?
- Are you in possession of currency or monetary instruments of a value equal to or greater than CAN\$10,000?

Notes:

1. As indicated in Part 2, Chapter 3 of the *CBSA Enforcement Manual*, it is also appropriate to ask returning residents if they have any firearms or other weapons in their possession or if firearms form part of their declaration.
2. All of the above questions would be asked during normal or average traffic periods or when a person is being referred to secondary. However, the three questions concerning commercial/business goods; agricultural goods; and duty-free purchases may be omitted at the discretion of the superintendent during peak volume periods. The superintendent will continue to monitor traffic volumes and advise the PIL staff to return to a normal level of questioning as traffic subsides.
3. Supplementary primary questioning by the officer at PIL may also be required in some cases. For example, if a resident indicates he or she has been absent from Canada for 7 days or more, the officer should ask whether they have any unaccompanied goods.

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APPENDIX B

Canadian Citizens

Note: Documents that do not incorporate a photograph should be accompanied by supporting government issued photo identification.

Acceptable documents for establishing Canadian citizenship and identity

- **Canadian Passport**
- **Canadian Emergency Travel Document** (replaces Canadian Emergency Passport as of April 2009)
- **Canadian Temporary Passport**
- **Certificate of Canadian Citizenship** (wallet-sized card issued from 1954 to present)
Note: The laminated certificate contains a photograph of the holder; however, the photograph may not be current.
- **Enhanced Driver's Licence (EDL)** issued by a Canadian province or territory
- **Enhanced Identification/Photo Card (EIC)** issued by a Canadian province or territory
- **NEXUS card** (held by a Canadian citizen)
- **Free and Secure Trade (FAST) card** (issued to a Canadian citizen)

Acceptable documents for establishing Canadian citizenship

- **Certificate of Canadian Citizenship** (large form issued between January 1, 1947 to February 14, 1977)
- **Certificate of Retention** (issued between January 1, 1947 and February 14, 1977)
- **Certificate of Naturalization** (issued before January 1, 1947)
- **Registration of Birth Abroad Certificate** (issued between January 1, 1947 and February 14, 1977 by Canadian citizenship authorities)
- **Provincial or Territorial Birth Certificate** (individuals born in Canada)

Acceptable documents to support Canadian identity

- **CANPASS card** (Air, Corporate Air, Private Air, Boats, Remote Area Border Crossing) (held by a Canadian citizen)
- **Commercial Driver Registration Program card (CDRP)** (held by a Canadian citizen)
- **Provincial and Territorial Driver's Licence**
- **Employment or student card with photo and signature**
- **Provincial Health Insurance Card**
- **Provincial identity card**

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- **Canadian Forces Identification**
- **Police Identification**
- **Possession and Acquisition Licence** (issued under the *Firearms Act*)
- **Social Insurance Number Card (SIN)**
- **Credit Card**
- **Vehicle Insurance Certificate**
- **Vehicle Registration**

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Canadian Permanent Residents

Acceptable documents for establishing Canadian Permanent Resident (PR) status

- **PR Card** (The PR Card has an expiry date and is issued with a validity period of either one or five years.)
- **Record of Landing – Holder’s copy of Form IMM 1000**
 The Record of Landing form indicates that a person was given permanent resident status in Canada at the time of issuance. Care should be taken to ensure that details on the IMM 1000 match the bearer’s passport. PRs who become Canadian citizens have their Record of Landing stamped “The holder is no longer a permanent resident,” and any IMM 1000 bearing this stamp should not be accepted as proof of permanent resident status. The Record of Landing may also be stamped NOT VALID FOR TRAVEL where a PR Card has been issued.
- **A PR Travel document** (Counterfoil IMM 1346B)
- **A Confirmation of PR** along with a stamped PR Counterfoil may be considered proof of Canadian PR status until such time as the PR Card has been issued.

Acceptable documents to support identity for Canadian PRs

- **NEXUS card** (held by a PR of Canada)
- **FAST card** (held by a PR of Canada)
- **CANPASS card** (Air, Corporate Air, Private Air, Boats, Remote Area Border Crossing) (held by a PR of Canada)
- **CDRP card** (held by a PR of Canada)
- **Provincial and Territorial Driver’s Licence**
- **Employment or student card with photo and signature**
- **Provincial Health Insurance Card**
- **Provincial identity card**
- **Canadian Forces Identification**
- **Police Identification**
- **Possession and Acquisition Licence** (issued under the *Firearms Act*)
- **Social Insurance Number Card (SIN)**
- **Credit Card**
- **Vehicle Insurance Certificate**
- **Vehicle Registration**

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Status Indians

Acceptable documents for establishing Registered Indian Status and identity

- Secure Certificate of Indian Status (SCIS)
- Certificate of Indian Status (CIS)

Subsection 19(1) of the IRPA provides that every person registered as an Indian under the *Indian Act*, whether or not that person is a Canadian citizen, has the right to enter and remain in Canada.

Note: The CIS was replaced by the SCIS in 2009. Existing versions of the CIS will remain valid until their renewal date. The SCIS denotes status and identity.

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U.S. Citizens

Note: Documents that do not incorporate a photograph should be accompanied by supporting U.S. government issued photo identification.

Acceptable documents for establishing U.S. citizenship and identity

- U.S. Passport
- U.S. Certificate of Citizenship
- U.S. Certificate of Naturalization
- U.S. Birth certificate
- Consular Report of Birth Abroad of a Citizen of the United States of America (also referred to as the Consular Report of Birth, CROBA or FS0240)
- U. S. Passport Card
- Enhanced Driver's Licence (EDL) issued by a U.S. State
- Enhanced Identification Card (EIC) issued by a U.S. State
- NEXUS card (held by a U.S. citizen)
- FAST card (held by a U.S. citizen)
- SENTRI card (held by a U.S. citizen)
- **Military Identification Card accompanied by Military Travel Orders** (Any U.S. citizen member of the U.S. Armed Forces who is wearing the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, and who is under official orders or permit of such Armed Forces (seeking entry in order to carry out official duties), may present a military identification card accompanied by the official orders when entering Canada.)

Acceptable documents to support U.S. identity

- CANPASS card (Air, Corporate Air, Private Air, Boats, Remote Area Border Crossing) (held by a U.S. citizen)
- U.S. Merchant Mariner's Card
- Driver's Licence
- Social Security Card
- Vehicle Registration
- Voter's Registration Card
- Military Identification Card
- Native American Tribal Photo Identification Card

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U.S. Permanent Residents

Acceptable documents for establishing U.S. PR status

- **U.S. PR Card** (Green Card, Form I-551)
- **U.S. ADDIT Stamp I-551** (provided its expiry date remains valid)
- **NEXUS card** (held by a U.S. PR)
- **FAST card** (held by a U.S. PR)
- **SENTRI card** (held by a U.S. PR)

Acceptable documents to support identity for U.S. PR

- **U.S. Merchant Mariner's Card**
- **Military Identification Card**
- **Driver's Licence**
- **Refugee Travel Document** (Form Number I-571)
- **Parole Authorization** (Form I-512)
- **Social Security Card**
- **Vehicle Registration**
- **Voter's Registration Card**

Native American Indians

Acceptable U.S. documents for establishing identity and status for Native American Indians

- **Form I-872 American Indian Card**
- **Enhanced Tribal Card** (when available)

Note: Native American Indians that are not registered as an Indian under the *Indian Act* are not authorized to enter Canada by right and are subject to the same control process as any other U.S. citizen when seeking to enter Canada.

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6. Bars – Any location on a cruise ship that serves alcoholic beverages. This includes public areas on board a cruise ship that are intended for the use of passengers such as dining rooms, lounges, restaurants, stand-alone bars, etc.
7. Commingling – The contact between arriving or departing cruise ship passengers, who are under the control of the vessel, and other passengers, or residents in areas between the vessel and the vessel's controlled areas. Refer to Jewett Principles stated in paragraph 107.
8. Cruise ship – As defined in Memorandum D3-5-7, Temporary Importations of Vessels, “a passenger vessel having overnight accommodations for a least 100 persons exclusive of crew accommodations, but does not include a ship engaged in scheduled passenger or cargo ferry service”. Also, in accordance with section 207.1(4), of the *Criminal Code*, an “international cruise ship” is identified as “a passenger ship that is suitable for continuous ocean voyages of at least forty-eight hours duration, but does not include such a ship that is used or fitted for the primary purpose of transporting cargo or vehicles”.
9. Cruise ship operation (CSO) – A designated CBSA office that conducts CBSA clearances of cruise ships that arrive in Canada. CSO sites are identified in the Directory of CBSA Offices.
10. Foreign national – Under the *Immigration and Refugee Protection Act*, a person who is not Canadian citizen or a permanent resident (includes a stateless person).
11. Gangway monitoring – The observation and monitoring by border services officers of passengers and crew disembarking a vessel on the passenger gangway.
12. Lottery scheme – As set out in Part VII, paragraph 207(4) of the *Criminal Code*, a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting other than
 - (a) three-card monte, punch board or coin table;
 - (b) boomaking, pool selling or the making or recording of bets, including bets made through the agency of a pool; or pari-mutuel system, on any race or fight, or on a single sporting event or athletic contest; or
 - (c) for the purposes of paragraphs (1)(b) to (f), a game or proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g) that is operated on or through a computer, video device or slot machine, within the meaning of subsection 198(3), or a dice game.
13. Marine Facilities Restricted Areas Access Clearance Program – A program that prevents unlawful acts of interference with the marine transportation system by limiting access to specific areas at marine facilities to those individuals who have been granted a transportation security clearance. The intent is to restrict areas at a port or port facilities thereby ensuring maximum security at all ship-port interfaces. For more information, refer to Transport Canada's Web site.

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14. Marine Transportation Security Act – Legislation that applies to all vessels in Canadian waters and to maritime facilities and operators. For more information, refer to [Transport Canada's](#) Web site.
15. Remote area – For the purpose of this chapter and for CSO sites, each individual CBSA region determines remote areas.
16. Repatriating crew member – Individuals working aboard a vessel that are ending their work rotation period and disembarking for the final time.
17. Ships' stores – As outlined in Memorandum [D4-2-1](#), *Ships' Stores Regulations*, designated goods contained on board an ocean-going vessel that is engaged in international trade and that proceeds outside Canada or proceeds to any port in Canada. Goods stored in ship's stores are identified in Column II in the Schedule of the Regulations. These goods include but are not limited to edible supplies, spirits and wines, ales and beers, tobacco and cigarettes and cigars. Ships' stores must be reported under section 95 of the *Customs Act*. Further information can be found in sections 68.17 and 70 of the *Excise Tax Act*.
18. Sterility – The physical isolation of cruise ship passengers and crew and their goods arriving into, in transit through or departing from Canada from all other individuals until CBSA clearance is completed.
19. Transporters – A person who owns, operates, charters or manages a conveyance or a fleet of conveyances and an agent for that person.

Types of Port of Call Stops

20. Port of entry – The first Canadian port where a vessel arrives seeking to enter Canada. Admissibility of cruise ship passengers and crew is determined at the first port of entry.
21. Coastwise – The next or subsequent Canadian port of call (stops) after the port of entry.
22. Final disembarkation – Where the voyage terminates in Canada and the cruise ship passengers are unloaded for the last time with their baggage.

Note: A **port of call visit** is a stop or a destination on the cruise itinerary where the passengers and crew may leave the ship for a certain time period to visit the port city. The docking period can range from a few hours to overnight. The purpose of the visit is to allow passengers and crew the opportunity to tour, shop, sightsee, etc. Only items of a personal nature required for the day trip are permitted off the vessel.

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Cruise Ship Routing Examples

23. The origin, routing, and itinerary of cruise ships will vary. For example:
- (a) A cruise ship may originate in a foreign port and terminate its voyage at the first port of entry in Canada;
 - (b) A cruise ship may originate in a foreign port and visit several ports in Canada before terminating its voyage in Canada;
 - (c) A cruise ship may originate in a foreign port and visit several ports in Canada before terminating its voyage at a foreign port; or
 - (d) A cruise ship may originate in Canada and visit a foreign port before terminating its voyage in Canada.

Shipping Agent and Cruise Ship Operator Responsibilities

Before Arrival Information – Cruise Ship Travellers

24. Voluntary compliance with ***Before Arrival Information – Cruise Ship Travellers*** will assist in the expeditious processing of crew and passengers.

25. ***Before Arrival Information – Cruise Ship Travellers*** will include the following passenger information:

- (a) Surname, first name and initial(s) of any middle names;
- (b) Date of birth;
- (c) Gender;
- (d) Name of the country that issued the passport or travel document or, if the person does not have a passport or travel document, the person's citizenship or nationality; and
- (e) Passport or travel document number.

26. In addition, the CBSA may request the following information:

- (a) The passenger's city of origin;
- (b) The final destination for CBSA clearance; and
- (c) Whether the person is travelling in-transit through Canada.

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27. Until an automated system is in place for the marine mode, it is essential that the ***Before Arrival Information – Cruise Ship Travellers*** be provided as far in advance as possible of the cruise ship's arrival to facilitate the movement of passengers and crew and their goods. ***Before Arrival Information – Cruise Ship Travellers*** should be provided a minimum of seven days in advance. An updated/confirmed manifest must be provided as soon as the cruise ship departs the last foreign port before arriving in Canada.

Cruise Ship Pre-Arrival Notice

28. A complete, accurate and legible pre-arrival notice must be submitted to the CBSA a minimum of **96** hours before the cruise ship's arrival. This notice should be sent securely, either electronically or by fax, to the nearest available CBSA office that will provide clearance to the cruise ship.

29. In situations where a voyage is less than **96** hours in duration, the notice must be submitted at the time of departure from the last foreign port. Form BSF136, *Cruise Ship Pre-Arrival Notice*, must be forwarded securely to the CBSA electronically or by fax.

30. Form BSF136 should include the following information:

- (a) Name and call sign of cruise ship;
- (b) Name of the agent representing the cruise ship;
- (c) Total number of passengers and crew;
- (d) Total number of repatriating crew;
- (e) Date and time of arrival and departure;
- (f) Expiry dates of the ship's certificates; and
- (g) Any additional port-specific information required to facilitate clearance.

Note: Subsection 268(1) "reporting obligation" of the *Immigration and Refugee Protection Regulations* states that "A transporter must, without delay, notify an officer at the nearest port of entry of any foreign national who ceases to be a member of the crew for a reason listed in paragraph 3(1)(b)."

"3.(1)(b) a person ceases to be a member of a crew if

- (i) they have deserted;
- (ii) an officer believes on reasonable grounds that they have deserted;
- (iii) they have been hospitalized and have failed to return to the means of transportation or leave Canada after leaving the hospital, or
- (iv) they have been discharged or are otherwise unable or unwilling to perform their duties as a member of a crew and failed to leave Canada after the discharge or after they first became unable or unwilling to perform those duties."

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31. The transporter must record the reason as identified in paragraph 3.(1)(b) and provide it in writing at the request of the border services officer. This requirement does not apply if the crew member is a Canadian citizen or permanent resident of Canada. A foreign national who enters Canada as a member of a crew must leave Canada within 72 hours after he or she ceases to be member of a crew. This requirement only applies to crew members authorized to enter as temporary residents without work permits.

Remote Areas

32. In the case of remote areas, Form BSF136 **must be** submitted 10 business days before the cruise ship arrives at the regional CBSA office of arrival. This time is required to allow CBSA sufficient time to make the necessary operational arrangements to provide CBSA clearance at a remote location (e.g. scheduling border services officer to travel to the remote location).

Distribution of Form E311, CBSA Declaration Card

33. The cruise line operators will distribute a Form E311, *CBSA Declaration Card*, to all passengers ending their voyage and to repatriating crew members and direct them to complete the form before arrival at the port of disembarkation. As well, passengers and crew members are required to complete Form E311 when they disembark the vessel, at any stop, with items that will remain in Canada. The time and manner of Form E311 distribution is left to the agent and/or cruise ship operator; however, it is mandatory that E311 forms be completed before the forms are presented to the CBSA.

Cruise Ships Transporting Commercial Cargo

34. A conveyance report as well as cargo reports must be submitted for cruise ships transporting commercial cargo in accordance with Advance Commercial Information (ACI) regulations. Commercial cargo on cruise ships is not excluded from the requirements of ACI. Form A6, *General Declaration*, must be completed. The cargo must be reported to the CBSA, within the prescribed time frame, on Form A6A, *Freight/Cargo Manifest*.

Note: For further information, refer to the ACI Program.

35. For more information on transporting commercial cargo, refer to memoranda D4-2-1, *Ships' Stores Regulations*, D3-5-1, *Vessels in International Service*, and D3-5-2, *Marine Cargo - Import Movements*.

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Inward and Outward Report

Inward Report

36. Although the master of the vessel is responsible for the inward report of the vessel, it is acceptable for the ship's purser or other designated ship's officer to meet the CBSA upon arrival to facilitate the clearance process. The CBSA should be provided with the names of the master, the officer-in-charge of passenger clearance, and the officer-in-charge of crew clearance.

37. Form A6 must be presented to the CBSA at the time of inward report. At the start of the cruise ship season, the complete vessel itinerary should be attached to Form A6. The itinerary will consist of the vessel's destinations, including arrival and departure information.

Note: Form A6 inward is to be stamped during the processing of a cruise ship that is fully cleared at the first port of entry, whether as a small cruise ship (250 passengers and crew or less) or as a large cruise ship that is fully cleared at a CSO or under cost recovery.

38. At all subsequent ports of call, including the final port before the vessel exits Canada, a fax of Form A6 inwards and outwards is acceptable. For cruise ships that are fully cleared, and the port of exit is in a remote location in Canada, a fax of Form A6 must be sent to the closest CBSA district office where the cruise ship is exiting Canada.

Outbound

39. All cruise ships outbound from Canada must file the following documentation at the last Canadian port:

- (a) A complete crew list;
- (b) An outward report on Form A6;
- (c) Safety and crew certificates (upon request); and
- (d) Port warden certificates (upon request).

Note: Effective June 15th, 2008, the CBSA, on behalf of Health Canada, will replace the deratification certificate with a ship sanitation control exemption certificate or a ship sanitation control certificate. In the interim, deratification certificates and ship sanitation control exemption certificates will continue to be accepted; however, after June 15, 2008, ship sanitation control exemption certificates will be mandatory.

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Note: Port warden certificates prove that the ship complies with regulations pertaining to the distribution, content, stowage and securing of cargo; the soundness of the vessel; the stability load line requirements of a specified voyage; and the proper loading of the vessel. In accordance with paragraph 56 of Memorandum D3-5-1, port warden certificates are not normally examined by the CBSA before departure. However, where the CBSA is advised that such a certificate has not been issued or that any duty, fee or penalty payable to the Crown or any agency of the Crown has not been paid, permission to sail will be withheld until the situation is corrected.

40. When a border services officer believes that all non-resident crew members are not on board a vessel at the time that outward clearance is requested, a crew muster may be conducted.

41. A delay in sailing will not necessitate the preparation of a new outward report (Form A6) unless one of the following circumstances applies:

- (a) Bonded stores are laden on board after the CBSA's clearance;
- (b) Crew changes have occurred; or
- (c) Delays are unusually long (e.g. mechanical difficulties or bad weather).

42. For more information on the A6 outward manifest, refer to Memorandum D3-1-8, *Cargo – Export Movements*.

Vessel Requirements

43. At the time of the vessel's initial arrival for the cruise ship season, the last port clearance must be presented to the CBSA. This document is unique to each issuing country and is not universal in appearance. This document is not required on subsequent voyages.

Bars and Ships' Stores

44. During the voyage between Canadian ports of call, bars and ships' stores (on board the vessel) are allowed to remain open.

45. While a cruise ship is in port, one bar per 1,000 passengers or one bar per deck that provides hospitality services, whichever is greater, may be allowed to remain open. For example, if there are four decks providing hospitality services, four bars may be allowed to remain open. A letter outlining the location of the bars must be presented 96 hours in advance to the local CBSA office where the cruise ship shall be in port. This letter may be submitted by the shipping agent along with the vessel reporting documents such as Form A6. The ship's stores must be closed and secured upon arrival at the Canadian port for the duration of the vessel's stay. Any work that is to be conducted in the ships' stores or bars, such as the removal of inventory, must be reported to the CBSA.

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46. In the event that a cruise ship docked in a Canadian port has more bars open than what is stated in the above paragraph, AMPS contravention number C207 is applicable. For more information, consult the [AMPS Master Penalty Document](#).

47. The authority to control ships' stores (including bars) can be found in Memorandum [D4-2-0](#), *Ships' Stores Regulations*, paragraph 4:

"When a ship arrives at a Canadian port, the master of the ship shall place alcohol, tobacco and other goods for sale on board the ship under lock or seal, and shall keep them there while the ship is in the port, except where otherwise authorized by an officer."

48. The requirements for the control of ships' stores can be found in Memorandum [D3-5-1](#), paragraph 48:

"On-board duty-free shops and bonded stores will be sealed while a cruise ship is in port. However, on request, a reasonable quantity of non-duty paid alcohol and beer may be left unsealed for the use of the passengers and their guests."

49. Form [E1](#), *Ship Stores Declaration*, or similar documentation from other countries should be filed on the initial arrival and upon subsequent voyages. The form is used to document cigarettes, alcohol, all meats (except cooked canned meats), live animals, narcotics and drugs, firearms (including ammunition) and pornography on board the vessel. The name and rank of the ship's officer in charge of ship's stores and the location of the goods should also be noted on the form.

50. Accurate records must be maintained on board the cruise ship to reflect the liquor and tobacco in the ship's bars and bond rooms. The CBSA retains the right to verify these records under the *Customs Act*.

Receptions on Board

51. Cruise lines that host receptions on board a ship while it is in port must inform the CBSA of the date and time of the event if in-bond liquor stores are to be served. A liquor consumption list should be completed by the hotel manager, or the ship's designated individual responsible for organizing the occasion, for each reception that the ship hosts. An accounting entry must be completed and forwarded by the ship's agent to the CBSA for payment of duties and taxes. The consumption list will also be forwarded to the appropriate liquor control board for the assessment of provincial/territorial fees.

Note: For the purpose of this chapter, receptions are events that are held on board a cruise ship docked at a Canadian port where guests who are not passengers on board the vessel are invited on board and are served alcoholic beverages for a specific occasion. Regardless of the reason for the reception (inaugural visit, tourism party, etc.) and regardless of the number of people attending the reception, duties and taxes are applicable.

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Crew Bars

52. Crew bars are strictly off limits to visiting Canadian residents, cruise ship passengers, cruise line shore staff, stevedoring staff and service company personnel. All slot machines in crew bars must be turned off while the vessel is in port. Alcohol (including wine and beer) is not to be served to anyone other than ship's crew in the crew mess. Any violation of these conditions regarding the consumption of alcohol by non-crew members will result in crew bars being sealed while the cruise ship is in port.

Casinos

53. The following legislation governing lottery schemes (casinos) on an international cruise ship is from the *Criminal Code*:

“207.1(1) Despite any of the provisions of the Part relating to gaming and betting, it is lawful for the owner or operator of an international cruise ship, or their agent, to conduct, manage or operate and for any person to participate in a lottery scheme during a voyage on an international cruise ship when all of the following conditions are satisfied:

- (a) all the people participating in the lottery scheme are located on the ship;
- (b) the lottery scheme is not linked, by any means of communication, with any lottery scheme, betting, pool selling or pool system of betting located off the ship;
- (c) the lottery scheme is not operated within five nautical miles of a Canadian port at which the calls or is scheduled to call; and
- (d) the ship is registered
 - (i) in Canada and its entire voyage is scheduled to be outside Canada, or
 - (ii) anywhere, including Canada, and its voyage includes some scheduled voyaging within Canada and the voyage
 - (A) is of at least forty-eight hours duration and includes some voyaging in international water and at least one non-Canadian port of call including the port which the voyage begins or ends, and
 - (B) is not scheduled to disembark any passengers to a Canadian port who have embarked at another Canadian port, without calling on at least one non-Canadian port between the two Canadian ports.”

54. While the ship is in port, casinos must not be operational and must remain closed.

Disembarking

55. It is the master's responsibility to ensure that no passengers or crew disembark or embark the vessel prior to CBSA clearance. For more information on penalty C018, refer to the [AMPS Master Penalty Document](#). The CBSA must ensure that the gangway is continuously monitored.

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direction and assistance when required for presentation to the CBSA and the expedient removal of baggage.

74. Disembarking passengers will claim their luggage and then proceed directly to a border services officer. At that point they will present their completed E311 declaration card, proof of citizenship and picture ID to the officer.

75. The primary border services officer will review the passenger's ID and completed E311 declaration card and ask any questions required to clarify information. If released, the passenger will exit the CBSA area. If referred, the passenger will be directed to the CBSA secondary area for further processing.

Personal Exemptions

76. All goods, other than the personal effects of passengers and repatriating crew, that are to be landed in Canada (regardless of their value) must be reported to the CBSA. A list of goods to be landed must be presented each time a vessel reports inward. The CBSA will determine when a cargo control document will be required for such goods. Examples of goods that would require the completion of a cargo control document include the following:

- (a) In-bond/in-transit goods valued at \$1,600 or more;
- (b) Goods that are being moved from ship to ship, if they will remain in Canada for more than 40 days; and
- (c) Controlled and restricted items such as firearms.

77. For more information, refer to memoranda D4-2-1, D3-5-1 and D3-5-2.

78. Canadian resident crew members signing off a ship in a Canadian port will be entitled to claim their personal exemptions under *Customs Tariff* item 98.04 and, if applicable, No. 9805.00.00 for former residents (after a year's absence). For more information, refer to memoranda D2-3-1 and D2-3-2, *Former Residents of Canada Tariff Item No. 9805.00.00*.

79. Foreign crew signing off a ship in a Canadian port will be entitled to import personal goods on a temporary basis under *Customs Tariff* item No. 9803.00.00. When foreign crew will be settling in Canada and the required documentation has been presented, the provisions of tariff item No. 9807.00.00 for settlers would apply. For more information, refer to memoranda D2-1-1 and D2-2-1, *Settlers' Effects Tariff Item No. 9807.00.00*.

80. A completed Form Y14, *Crew's Effects Declaration*, should be presented to the CBSA at the time of the vessel's initial inward report. This form lists the crew members' written declaration of all goods in their possession that have been legally acquired while outside of Canada. This form provides the officer with a complete primary declaration and acts as the "point of finality" before any secondary examination processing. It may be used to identify goods held or intended for someone else and goods not to be

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landed in Canada. Crew joining the ship on subsequent voyages should also complete this declaration form.

81. Crew members are entitled to personal effects, alcohol (1.14 litres of liquor or 1.5 litres of wine or 24 x 355 millimetre bottles/cans of beer or ale) and tobacco products (200 cigarettes, 50 cigars/cigarillos, 200 tobacco sticks and 200 grams of manufactured tobacco). Any excess liquor or tobacco must be stored in a bond room. Restricted and prohibited goods such as narcotics, weapons and pornography must be reported on Form E1 and are subject to strict control aboard the vessel. Such goods are subject to seizure if found in the possession of crew members.

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Admissibility Requirements at the Port of Entry

82. At the first port of entry into Canada, the CBSA must verify the admissibility requirements of the passengers and crew and any other persons aboard the cruise ship.

83. Even if the passenger is not planning to disembark the vessel at this location, this is the first port of entry, comparable to any other mode of transportation, and accordingly all admissibility requirements must be verified. The captain will still be required to present those passengers that the CBSA requests to see.

84. Passengers, as well as any crew that may be terminating their work rotation (repatriating crew), who are leaving the ship in Canada, are required to present their goods to the CBSA and complete an [E311](#) declaration card.

85. When vessels arrive in Canada, passports for all persons must be presented to the border services officer together with a complete list of all passengers and crew members on Form [E63-1](#), *Cruise Vessel/Passenger and Crew Arrivals*. The officer will review the passenger and crew member list and passports/travel documentation, and request an examination for any passenger, person or crew member where further information is required. Foreign nationals requiring a temporary resident visa to enter Canada are to appear personally for examination by a border services officer. After the examination, the officer will either authorize the passenger to enter Canada as a temporary resident by stamping the passport or refer the passenger for further processing.

Stamping of Passports

86. When authorizing “temporary resident” entry to a foreign national, the border services officer shall stamp the person’s passport or travel document. In the case of a temporary resident visa holder, the stamp should be placed, wherever possible, on the page opposite the visa.

87. As a matter of current practice, passports of Canadians and permanent residents are not stamped. However, if requested, border services officers may stamp passports of Canadians and permanent residents.

Passport Stamping Exceptions

U.S. Citizens

88. While it is not a requirement, border services officers are encouraged to stamp the passports of U.S. citizens. Stamping of passports and travel documents is a best practice and should be done whenever possible.

Cruise Ship Passengers

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89. In situations where foreign nationals exempt from the requirement for a temporary resident visa are disembarking for a port of call visit and they have been authorized to enter Canada and are immediately returning to the same cruise ship, local management will determine whether border services officers will or will not stamp passports.

90. Passports or travel documents of foreign nationals who require a temporary resident visa must be examined and stamped at the first port of entry where entry is authorized. Visa-exempt foreign nationals other than U.S. citizens who are disembarking the cruise ship, are not returning to the vessel and have been authorized to enter Canada must have their passport or travel document stamped.

Temporary Resident Permit (formerly entitled Minister's Permit)

91. Since April 30, 2005, visa offices no longer issue temporary resident permits on IMM 1442B documents. Visa offices provide the foreign national with a letter of introduction to present to a border services officer upon arrival in Canada. Furthermore, the offices will electronically authorize the issuance and printing of a temporary resident permit at ports of entry.

Foreign Nationals – Work Permits and Coasting Trade

Work Permits and Coasting Trade

92. The coasting trade for the purpose of foreign nationals is the carriage of goods or passengers by ship from any place in Canada to the same place, or to any other place in Canada either directly or by way of a place outside Canada. It includes mariner activity of a commercial nature by a ship in Canada, e.g. tour boats. Foreign ship owners wishing to engage in this activity require coasting trade licences issued by the CBSA in cooperation with the Canadian Transportation Agency.

93. Foreign nationals working as crew members on a vessel seeking entry into Canada to engage in the coasting trade require Human Resources and Social Development Canada confirmation and must obtain a work permit. Foreign nationals not in possession of proper work documentation as required under the legislation may be subject to an inadmissibility report and enforcement action.

94. The Government of Canada's Temporary Foreign Worker Program allows eligible foreign workers to work in Canada for an authorized period of time if employers can demonstrate that they are unable to find suitable Canadians/permanent residents to fill the jobs and that the entry of these workers will not have a negative impact on the Canadian labour market.

95. Information on programs designed to facilitate the entry of foreign workers as permanent residents can be found on the following CIC Web site: [Temporary Foreign Worker Program](#).

Coasting Trade Licences

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96. A vessel wishing to obtain a coastal trade licence should immediately contact the Canadian Transportation Agency to determine if it is required. The Agency is the first point of contact for all foreign vessels. It helps vessels deal with applications to use foreign vessels in Canada and allows foreign equipment to be used when suitable Canadian vessels are not available.

Immigration Requirements

Crew List

97. The *Immigration and Refugee Protection Regulations* (IRPR) defines the master and all other persons employed on a ship to perform duties related to the operation of the vessel or the provision of services to passengers or other members of the crew as “members of the crew”. These would include licensed officers and non-licensed crew such as deck crew, engine room crew and kitchen and mess room staff. On a cruise ship, crew members also include the following persons:

The hotel manager; cruise director; purser; medical staff; managers and staff of the ship’s bars; restaurants, boutiques and casino; housekeeping staff; and entertainers.

98. Under the IRPR, the following persons are not considered to be crew members and therefore should not be included in the crew list:

- (a) Any person whose fare is waived in exchange for work to be performed during the voyage or trip;
- (b) Any person who performs maintenance or repairs under a service contract with a transportation company during the voyage or trip while the means of transportation is in Canada; or
- (c) Any other person who is on board the means of transportation for a purpose other than to perform duties that relate to the operation of the means of transportation or the provision of services to passengers or members of the crew.

99. At the beginning of the cruise ship season, the crew list must be presented to the CBSA at the time of initial arrival. In addition, the master of the vessel or ship’s agent is responsible for advising the CBSA of changes in the crew on subsequent voyages and for presenting a repatriating crew manifest when applicable.

Stowaways and Deserters

100. Section 262 of the IRPR states that “On the arrival of a vessel at its first port of call in Canada, the transporter must notify an officer at the nearest port of entry of the presence of any stowaway and, on request of the officer, must without delay provide a written report concerning the stowaway.”

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101. The master of the vessel must hold the stowaway in custody aboard the ship until that person is presented to the CBSA for completion of an examination, as per paragraph 148.(1)(b) of IRPA. For further information, refer to the Chapter 17, Section 5.7 of the *CIC Enforcement Manual*.

102. A marine transportation company that allows a stowaway to disembark at a place other than a designated port of entry faces prosecution under paragraph 124.(1)(a) of the IRPA.

103. Where a stowaway has arrived at a port of entry, all pertinent information regarding the occurrence must be immediately forwarded to the local CBSA office for appropriate action.

Facility Owner or Operator Responsibilities

104. Subsection 6.(1) of the *Customs Act*, in regard to providing the CBSA with adequate facilities, states the following:

“The owner or operator of
 (a) any international bridge or tunnel, for the use of which a toll or other charge is payable,
 (b) any railway operating internationally, or
 (c) any airport, wharf or dock, that receives conveyances operating internationally and in respect of which a customs office has been designated under section 5
 shall provide, equip and maintain free of charge to Her Majesty at or near the bridge, tunnel, railway, airport, wharf or dock adequate buildings, accommodations or other facilities for the proper detention and examination of imported goods or for the proper search of persons by customs officers.”

CBSA Security Requirements

105. CBSA processing is primarily conducted in the arrivals area. However, there are other areas and facilities – including corridors and/or passenger channelling devices on access routes to and from the vessel and international corridors, baggage unloading systems, hold rooms, etc. – that (i) shall be provided and maintained by the marine operator and/or the owner/operator of the dock or wharf in such a way as to satisfy the sterility and security requirements of the CBSA and (ii) should preclude any contact between arriving or departing passengers under the control of the operator to avoid commingling.

Sterility/Commingling

106. In accordance with the Jewett Principles that state the Government of Canada’s position on commingling, there are two general principles:

- (a) There will be no commingling of arriving, departing and in-transit passenger streams that have traditionally been required to be kept segregated prior to statutorily mandated inspection and clearance by the Canadian or U.S. inspection services; and

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113. The CBSA will verify the required safety and inspection certificates at the time of the vessel's initial arrival, noting the expiry dates to ensure that the certificates will remain valid for the duration of the cruise ship season. If any of the required ship's certificates are expired, no outward report number will be issued for the vessel until updated certificates are presented to the CBSA for verification.

114. It is the responsibility of the master of the vessel or the ship's agent to ensure that all certificates are current. For further information regarding safety and crew competency certificates, refer to Memorandum [D3-5-1](#).

115. Border services officers will collect completed [E311](#) declaration cards and ensure that all persons and goods meet the requirements for entry.

116. Applicable duties and taxes will be collected when required.

117. Persons and/or goods not allowed entry are processed in accordance with applicable legislation and regulations outlined in CBSA policies and procedures.

Crew Clearance Procedures

118. Crew clearance procedures differ slightly from passenger clearance procedures. The following procedures are recommended:

- (a) Cruise lines normally restrict the crew movement to times when it will not impede the flow of passenger processing. If necessary, CBSA may wish to limit crew movement to specific periods where strict time frames or "windows" will be set for crew to disembark and embark the vessel.
- (b) CBSA must be present at the crew gangway, or in a shore side area that is dedicated to CBSA clearance facility.
- (c) Every crew member disembarking the vessel will proceed directly to CBSA and present their crew identification card, which should include a photo. Crew members travel documents will remain in the Captain's possession. In situations where the vessel is anchored offshore and crew members are brought in by tender, due to the site being in a remote or desolate location, with no facilities, it is the responsibility of local management to determine if officers will travel out to the vessel to clear crew members, or if they will remain shore side.
- (d) Crew members on shore leave for the day will not be required to submit an [E311](#) declaration card; however, CBSA may ask any primary questions deemed necessary and must also intercept individuals for possible referral for further processing as a result of pre-arrival targeting.
- (e) Crew members that are repatriating or ending their contract, as well as crew members that wish to disembark the vessel with items intended to remain in Canada, will be required to complete an [E311](#) declaration card.
- (f) Every effort should be made to utilize contraband detection tools such as an x-ray, ionscan, IPIL and/or detector dog in the area that crew members are being processed. CBSA must

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satisfy itself that all necessary checks have been completed to ensure that no persons or goods unlawfully enter Canada.

- (g) Any crew member that requires further processing will be escorted to a dedicated CBSA secondary area.
- (h) Prior to departure, the cruise lines are required to provide a list of all passengers and crew who have not returned to the vessel. This list will be provided to CBSA to respond to the security issues as soon as possible in accordance with procedures outlined in the Chapter 17 of the CIC Enforcement Manual. Accordingly, this list will be retained by CBSA should it be required for future enforcement actions, investigations and intelligence analysis.

Small Cruise Ship Clearance at CSO Sites

119. The following applies to A6 forms (inwards and outwards reporting) to be used in the cruise ship mode for full clearances of small cruise ships at CSO sites and for cruise ships fully cleared under cost recovery agreements and at remote locations:

- (a) Form A6 inwards and outwards is to be stamped during the processing of a cruise ship that is fully cleared at the first port of entry whether as a small cruise ship (250 passengers and crew or less) or as a large cruise ship that is fully cleared under a cost recovery agreement.
- (b) Once the cruise ship has been fully cleared, the shift superintendent is responsible for notifying all subsequent ports of call by using Form BSF137, *Small Cruise Ship Full Clearance Notice*. If a subsequent port of call is not a CBSA office, then Form BSF137 **must** be sent to the closest CBSA district office. See Appendix B for a complete listing.
- (c) At all subsequent ports of call, including the final port prior to the vessel exiting Canada, a fax of Form A6 inwards and outwards is acceptable.
- (d) For a cruise ship that is fully cleared, and the port of exit is in a remote location in Canada, a fax of Form A6 must be sent to the closest CBSA district office where the cruise ship is exiting Canada.

120. In instances where the number of passengers and crew is low enough to be physically manageable and the risk has been assessed as low (which will be determined by local CBSA management) at the CSO, a full CBSA clearance may be completed at the first port of entry. This means that in addition to determining the admissibility of the passengers and crew, the reporting of goods will be done using E311 declaration cards. To be considered a small cruise ship, this number has been determined to be 250 passengers and crew or less.

121. It is understood that the passengers will not be required to re-pack their luggage and present it to the CBSA, but rather that the passengers will make their declaration and the CBSA may choose to examine the passengers' luggage in their cabins if a secondary examination is warranted.

122. By clearing both the people and the goods at the first port of entry, the need to monitor the movement of goods at subsequent port of call stops will be reduced. This approach will be most useful in

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locations where subsequent port of call stops are at remote locations and where it would not be feasible to have staff present at each location.

123. In instances where the complete CBSA clearance process is completed at the first port of entry, it will be the responsibility of local management at that location to notify all the subsequent ports of call that the full clearance of the passengers and the goods has been completed. However, the ship agent or master of the ship is still required to present appropriate documentation (Form A6 – inwards and outwards reporting) for each subsequent stop. If a subsequent port of call is not a CBSA office, then this form must be sent to the closest CBSA district office.

124. The CBSA reserves the right, when solid grounds exist, to be present at **all** port of call stops for the purposes of national security.

125. A fax of Form A6 inwards and outwards is acceptable at all subsequent ports of call, including the final port prior to the vessel exiting Canada. For cruise ships that are fully cleared, and the port of exit is in a remote location in Canada, a fax of Form A6 must be sent to the closest CBSA district office where the cruise ship is exiting Canada.

126. Large cruise ships (over 250 passengers and crew) may be fully cleared at a first port of entry if they arrived at a non-CSO site. However, this can **only occur** if local CBSA office has the capability to conduct a full clearance, and the client agrees to pay under a cost recovery agreement.

127. The shift superintendent is responsible for notifying all subsequent ports of call (CBSA offices) if a full clearance has been conducted and if the small cruise ship is continuing coastwise. Consult Form BSF137, which this notice can be sent electronically or by fax.

Note: The CBSA office that completed the full clearance of cruise ships of any size under cost recovery agreements **must** also notify all subsequent ports using Form BSF137.

Other Requirements

Safety of Border Services Officers

128. As referred to in Memorandum D3-5-1, border services officers shall not board or disembark a vessel in stream unless the vessel is properly stopped and anchored, or disembark a vessel that does not have a secure gangplank. In addition, a border services officer shall not make an attempt to transfer from a vessel to a water taxi while either vessel is underway.

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Health Canada Requirements – Vessel Flying Yellow Quarantine Flag

129. Where a vessel arrives in Canada flying a yellow quarantine flag indicative of an infectious disease on board, CBSA will not conduct normal clearance procedures until advised by the applicable health authority (Health Canada under the provision of the *Quarantine Act*) that it is safe to do so. CBSA, with the help of the local police authority or Royal Canada Mounted Police (RCMP), as appropriate, will ensure that the vessel is maintained in a sterile condition (with no embarkations or disembarkations) pending cancellation of the health alert.

International Waste Policy

130. All international waste on ships will be handled, transported, stored, and disposed of in accordance with the Health of Animals Regulations, section 47, 47.1 (1-10) and the requirements of the *Plant Protection Act* and Regulations.

131. International waste is normally prohibited from entry into Canada because of the risk of introducing foreign animal and/or plant diseases such as foot-and-mouth disease, rinderpest, African swine fever, hog cholera (classical swine fever), swine vesicular disease, Newcastle disease, Avian Influenza, African horse sickness, Emerald Ash Borer, Asian Long-horned Beetle, and many others.

132. International waste may be removed for disposal in Canada if a border services officer is satisfied that the off loading and discharge of such material meets the requirements of the policy and thus would not, or would not likely, result in the introduction into Canada or the spread within Canada of a vector, disease, pest, or toxic substance.

Cross Border Currency Reporting

133. Refer to Part 2, Chapter 2 of the *Customs Enforcement Manual* on procedures for Cross Border Currency Reporting.

Sanctions

Administrative Monetary Penalty System (AMPS)

134. Full implementation of AMPS in the commercial stream took place on October 7, 2002, when all contraventions became subject to monetary penalties.

(a) The following two contraventions may be applied in the marine mode:

(i) Contravention C018

Person in charge of a commercial conveyance arriving in Canada failed to transport passengers and crew to a CBSA office designated for that purpose and open for business, forthwith on arrival.

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(ii) Contravention C207

Master of a ship failed to place alcohol, tobacco and other goods for sale on board the ship under lock or seal in ship stores and keep them there while the ship was in port.

135. For more information on the contraventions C018 and C207, refer to the [AMPS Master Penalty Document](#).

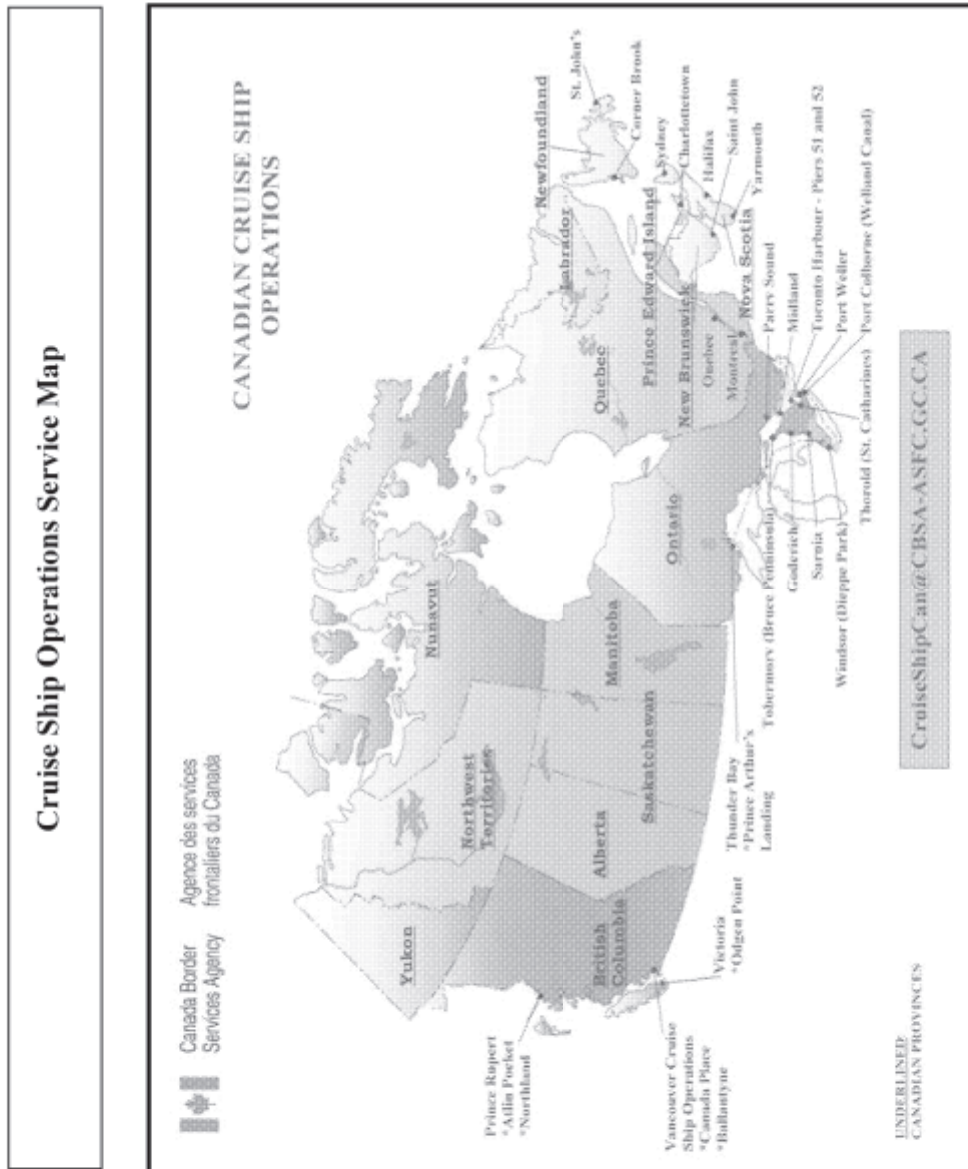
Additional Information

136. If you have any questions or require further clarification on this chapter, send them to us at CruiseShipCan@CBSA-ASFC.GC.CA.

Date issued November 24, 2003	Date modified December 03, 2010
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APPENDIX A



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Roles and Responsibilities

Vessel Owner and Operator

5. Under the *Immigration and Refugee Protection Act* (IRPA), the Immigration and Refugee Protection Regulations (IRPR) and the *Customs Act* and its regulations, transporters have several obligations. Those most pertinent to the ferry and/or tour boat processing procedures include:

Maritime Requirements – Transporter Obligations

6. Section 265.(1) of the IRPR states that, on arrival at the first port of call in Canada of a vessel registered in a foreign country, the transporter must provide an officer at the nearest port of entry with a list of all members of the crew.
7. The transporter must maintain on board a current list of all members of the crew while the vessel is in Canada.
8. The transporter must provide an officer with a copy of a final crew list prior to the vessel's departure from its final port of call in Canada.
9. The transporter is prohibited from carrying to Canada any person who is prescribed or does not hold a prescribed document or who an officer directs not to be carried.
10. The transporter must present all persons whom it has carried to Canada for CBSA examination. For more information, refer to Section 11 of the *Customs Act* and Section 148 of the IRPA.
11. The transporter must carry persons from Canada, whom it has carried to, or caused to enter Canada, and who is prescribed, or whom an officer directs to be carried.
12. On the arrival of a ferry and/or tour boat in Canada, the transporter must notify an officer at the nearest port of entry of the presence of any stowaway.
13. The transporter must notify a CBSA officer of deserting crew members.

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22. Border services officers are encouraged to use contraband detection equipment and to make full use of the Integrated Primary Inspection Line (IPIL) system when possible.

CBSA Security Requirements

23. CBSA processing shall be conducted in the arrival area of a facility designated for CBSA clearances. Ferry and/or tour boat processing shall not be conducted onboard the vessel.

- (a) The marine operator and/or the owner/operator of the dock or wharf shall provide and maintain the sterility and security requirements of the CBSA;
- (b) Security requirements must preclude any contact between arriving or departing passengers under the control of the operator to avoid commingling.

24. For more information on transporter obligations on immigration matters and liabilities, refer to ENF 15 of the CIC Enforcement Manual.

Arrival Requirements

25. Border services officers will ensure that the following documentation is submitted:

- (a) Form A6, *General Declaration*
- (b) Form E1, *Ship Stores Declaration*
- (c) Goods to be landed list (where required)
- (d) Number of passengers and crew members (if different from pre-arrival)
- (e) Repatriating crew list with reason for leaving (where required)
- (f) Joining crew list (where required)
- (g) Stowaway notification (where required)
- (h) Deserter notification (where required)
- (i) Completed E311 declaration cards from passengers and disembarking crew

Ferry and/or Tour Boat Arrivals

26. Border services officers must be present in a shore-side area that is dedicated to the CBSA clearance (facility) when any ferry and/or tour boat arrives in Canada.

27. Before passengers disembark, ferry and/or tour boat operators or representatives shall notify their passengers of all CBSA requirements. The E311 declaration card must be distributed to the passengers for completion to expedite CBSA processing.

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Ships' Stores, Bars, Receptions and Casinos

41. In the event that a ferry and/or tour boat has a bar, reception or casino onboard, the following is applicable. Ship stores and bars must be closed and secured upon arrival at the Canadian port for the duration of the ferry and/or tour boat's stay. Any work that is to be conducted in the ship stores, such as the taking of inventory, must be reported to the CBSA.

Note: The authority to control ships' stores (including bars) is found in Memorandum D4-2-0 *Ships' Stores Regulations*, which states:

“When a ship arrives at a Canadian port, the master of the ship shall place alcohol, tobacco and other goods for sale on board the ship under lock or seal, and shall keep them there while the ship is in the port, except where otherwise authorized by an officer.”

42. Ferry and/or tour boat operators hosting receptions aboard the vessel while it is in port must inform the CBSA of the date and time of the event if in-bond liquor stores are to be served. The operator shall complete a liquor consumption list for each party/reception they host. A CBSA entry will be completed and forwarded to the operator for payment of duties and taxes. The consumption list will also be forwarded to the appropriate liquor control board for the assessment of provincial/territorial fees.

43. For the purpose of these SOPs, receptions are events that are held on board a ferry and/or tour boat docked at a Canadian port, where guests who are not passengers on the vessel are invited on board and are served alcoholic beverages (and perhaps food) for a specific occasion. Duties and taxes are applicable regardless of the reason for the reception (an inaugural visit, tourism party, etc.) and regardless of the number of people attending the event or reception.

Bus Clearances

44. In order to expedite the processing of bus passengers, bus companies should be encouraged to provide CBSA officials with advance notification of the pending arrival of the bus and as much driver and passenger information as possible within an agreed upon timeframe. This information should be routinely screened through automated systems developed for these purposes to determine the risk associated with the conveyance and passengers.

45. Bus companies should be encouraged to utilize E311 declaration cards to facilitate the clearance of all bus passengers and drivers. The bus driver should ensure that the declaration cards are distributed to passengers in sufficient time for them to be completed prior to the arrival at CBSA offices.

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46. Prior to the processing of a bus, Ports of Entry should take into consideration the following elements:

- (a) The type of bus traffic (charter or non-charter groups);
- (b) The risk analysis of bus passengers and the bus company;
- (c) The availability of officers, facilities, electronic systems and tools to process the passengers, driver and bus.

47. Ports of Entry equipped with a designated bus processing area should require drivers and passengers to disembark the bus and proceed directly into a secure, controlled CBSA area where they will present themselves, along with a properly completed [E311](#) declaration card, appropriate identification and their luggage to a border services officer at a PIL booth for primary inspection.

48. Ports of Entry not equipped with a designated bus processing area should determine the type of clearance process based on the risk associated with the conveyance and passengers.

Stowaway and Deserters

49. Section 262 of the IRPR states that “On the arrival of a vessel at its first port of call in Canada, the transporter must notify an officer at the nearest port of entry of the presence of any stowaway and, on request of the officer, must without delay provide a written report concerning the stowaway.”

50. The master of the vessel must hold the stowaway in custody aboard the ship until that person is presented to CBSA for completion of examination, as per paragraph 148.(1)(b) of the IRPA. For further information, refer to ENF 17, Section 5.7 of the [CIC Enforcement Manual](#).

51. A marine transportation company that allows a stowaway to disembark at a place other than a designated location faces prosecution under paragraph 124.(1)(a) of the IRPA.

52. A foreign national who enters Canada as a member of a crew must leave Canada within 72 hours after they cease to be a member of a crew.

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53. Subsection 268.(1) “reporting obligation” of the IRPR states that “A transporter must, without delay, notify an officer at the nearest port of entry of any foreign national who ceases to be a member of the crew for a reason listed in paragraph 3.(1)(b).

“3.(1)(b) a person ceases to be a member of a crew if

- i) they have deserted;
- ii) an officer believes on reasonable grounds that they have deserted;
- iii) they have been hospitalized and have failed to return to the means of transportation or leave Canada after leaving the hospital; or
- iv) they have been discharged or are otherwise unable or unwilling to perform their duties as a member of a crew and failed to leave Canada after the discharge or after they first became unable or unwilling to perform those duties.”

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Bus and Train Clearance Procedures

10. Upon arrival in Canada, all buses/trains engaged in the international transportation of passengers and their goods, whether of Canadian or foreign registry, must proceed without delay to a designated CBSA office for reporting and processing.

11. In order to expedite the processing of bus/train passengers, bus/train companies should be encouraged to provide CBSA officials with advance notification of the pending arrival of the bus and train and as much driver, crew and passenger information as possible within an agreed upon timeframe. This information should be routinely screened through automated systems to aid in determining the risk associated with the conveyance and its passengers.

12. Bus/train companies should be encouraged to utilize the E311 Declaration Card, to facilitate the clearance of all bus/train passengers, drivers and crew. The bus driver/train crew should ensure that the E311 Declaration Cards are distributed to passengers in sufficient time for them to be completed prior to the arrival at CBSA offices.

13. Bus drivers/train crew should instruct passengers to have their identification documents and E311 Declaration Card ready once they arrive at the border.

14. CBSA policy is that **a minimum of two officers** should attend and process the passengers/crew members of a bus/train.

15. Prior to the processing of a bus/train, Ports of Entry (POEs) should take into consideration the following elements:

- a. The type of bus/train traffic (charter or non-charter groups);
- b. The risk analysis of bus/train passengers and the bus/train company;
- c. The availability of officers, facilities, electronic systems and tools to process the passengers, drivers and/or crew.

16. POEs equipped with a designated bus/train processing area should require drivers, crew and passengers to disembark the bus/train and proceed directly into a secure, controlled CBSA area where they will present themselves, along with a properly completed E311 Declaration Card, appropriate identification and their luggage to a BSO for primary inspection.

17. POEs not equipped with a designated bus/train processing area should determine the appropriate type of clearance process based on the risk associated with the conveyance and its travellers.

18. Every reasonable efforts should be made to ensure that travellers being offloaded are not exposed to severe weather.

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19. At locations without IPIL, BSOs should perform queries of travellers in available CBSA databases (ICES, FOSS), when possible.
20. Any traveller who requires further processing will be directed to the secondary area.
21. An examination of the empty bus/train should be conducted when required.
22. Once travellers have been released and no further action is required, travellers and their goods will be allowed to return to the bus/train and/or proceed into Canada.

Radio Communication Procedures

23. As always, officers should maintain radio communication with support officers throughout the entire bus/train clearance process.

Baggage Identification

24. To expedite CBSA processing at land borders, bus/train companies should be encouraged to ensure that each piece of baggage is tagged with a unique identifier, which in turn would be noted on, or attached to, the passenger's ticket (if applicable).

Train Bar Cars

25. As per the *Transportation of Goods Regulations*, goods imported but not released, including ale, beer, wines, and alcoholic beverages, are to be duty paid or sealed by the carrier in the lockers of the dining cars while the cars are in Canada.

Date issued September 30, 2013	Date amended
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OPERATIONAL BULLETIN: OPS-2015-01

TITLE: Tariff Item 9804 Returning Resident Exemptions, Online Purchases and Goods to Follow under Tariff Item 9804.20.00

Date of Issue:	Mode(s):	Target Audience:	Area of Interest:
2015-03-18	All	National	Travellers

Details:

- The purpose of this Operational Bulletin is to provide clarification regarding the returning resident exemptions for goods purchased or acquired while abroad, and either accompanying the traveller upon their return, or being imported at a later date as goods to follow.
- It will also serve to remind BSOs of their responsibility to issue Form BSF192 (formerly Form E24) in all instances where goods to follow have been declared.

Tariff Item 9804, Returning Resident Exemptions:

- Tariff Item (T.I.) 9804 reads: ***Goods acquired abroad by a resident or temporary resident of Canada or by a former resident who is returning to Canada to resume residence, for the personal or household use of that person or as souvenirs or gifts, but not bought on commission or as an accommodation for any other person or for sale, and reported by that person at time of return to Canada.***
- This includes any goods acquired while abroad and can include goods purchased, received as gifts, won as prizes, received as awards, or otherwise acquired.
- This also includes goods ordered online while in Canada and picked up at a United States (US) post office box or other location abroad, after an absence of 24 hours, 48 hours, or seven (7) days.
- Finally, this also includes those goods being imported as goods to follow after an absence of seven days.

Goods to Follow (applicable only under T.I. 9804.20.00):

- Although these rules apply to goods arriving from any foreign country, the instructions below will refer to goods returning from the US, given these are the goods most predominately encountered at ports of entry.
- A traveller may declare goods to follow upon his/her arrival at a port of entry

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and subsequently travel to the US to pick up the goods at a later date. This is allowable as long as the conditions of T.I. 9804.20.00 are met when the traveller initially returned, in that:

- 1) the traveller was absent from Canada for at least seven days;
 - 2) the goods were purchased **and/or** acquired while abroad during that time period;
 - 3) the goods were declared upon the initial return to Canada, as goods to follow; **and**,
 - 4) a Form BSF192 (formerly Form E24) was issued to the traveller.
- Without all of these conditions being met, the goods cannot be imported as goods to follow under T.I. 9804.20.00.
 - It is therefore imperative that officers ensure a Form BSF192 (formerly Form E24) is issued to any travellers who meet conditions one (1) through three (3), as described above.

Actions required by Border Services Officers:

- Officers are required to familiarize themselves with these procedures and ensure that Form BSF192 (formerly Form E24) is issued to any traveller declaring goods to follow.

Contact Information:

Traveller Processing Unit, Traveller Operations Division, Border Operations Directorate, Operations Branch

If you have any further questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Port of Entry Operations' generic inbox:

CBSA-ASFC_Ops_Travellers-Voyageurs.

Approved by:

Paulette Lefebvre
Director
Traveller Operations Division

Effective Date: 2015-03-18

Updated: 2015-03-18

Additional bulletins:



OPERATIONAL BULLETIN: OPS-2015-12

TITLE: Performing Minister's Delegate Functions and Reviews under the *Immigration and Refugee Protection Act*

Date of Issue:	Mode(s):	Target Audience:	Area of Interest:
2015-10-29	All	National	Port of Entry & Inland

Details:

- The purpose of this Operational Bulletin is to remind all Canada Border Services Agency (CBSA) employees that Minister's Delegates functions and reviews under the *Immigration and Refugee Protection Act* (IRPA) shall only be performed once the following course(s) have been successfully completed:
 - Minister's Delegates Reviews Training (Course Code: S6006-N). For greater clarity only the Minister's Delegates function and reviews covered by this course shall be performed.
 - Immigration for Chiefs and Directors (Course Code: S6014-N). For greater clarity only the Minister's Delegates function and reviews covered by the Immigration for Chiefs and Directors course shall be performed.
- The IRPA Designation and Delegation (D&D) Instruments does have a **hierarchical link** which means only the lowest level of authority is included in the D&D instruments as every position above this one (with a direct hierarchical link) has the same authority. However, officers and managers (including chiefs and directors) shall not perform Minister's Delegate functions and reviews until they have successfully completed the necessary training.

Note: Previous training (i.e. Senior Immigration Officer Training or Senior Immigration Examining Officer Training) through which officers obtained the delegated authority pre/post-IRPA is still valid. As such, officers and managers may perform Minister's Delegate functions if they have successfully completed this training.

Actions required by Officer(s):

- Officers and managers, (including chiefs and directors), shall not perform Minister's Delegate functions and reviews until they have successfully completed the necessary training.
- Officers and managers should familiarize themselves with the IRPA (D&D) Instruments.

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Contact Information:

If you have any further questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Port of Entry Operations' generic inbox: [CBSA-ASFC OPS TRAVELLERS-VOYAGEURS](#)

Approved by: Paulette Lefebvre
Director
Traveller Operations Division

Effective Date: 2015-10-29

Updated: N/A

Additional bulletins:



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OPERATIONAL BULLETIN: OPS-2015-15

TITLE: Syrian Refugees – Processing of Settler's Effects

Date of Issue:	Mode(s):	Target Audience:	Area of Interest:
2015-12-08	All	Ports of Entry	Travellers

Background:

The Government of Canada has committed to bringing 25,000 Syrian refugees to Canada. The Canada Border Services Agency (CBSA) has a significant role to play in this important humanitarian effort.

In preparation for the resettlement of these refugees, all standard settler processing policies and procedures have been reviewed. In light of the expected language and cultural barriers, combined with the settlers' inability to ascertain if their personal/household goods have been destroyed since their departure from Syria, the procedure for the reporting of settler's effects, including goods to follow, has been amended for this group of settlers only.

Settler's Effects Reporting for Syrian Refugees:

- In accordance with Tariff Item 9807.00.00, to qualify for the settler's effects exemption entitlement, the personal and household goods must be reported by the person at the time of their arrival in Canada.
- To facilitate the reporting of personal and household effects, and to offset the extremely tight interval that has been put in place for the CBSA to rapidly process the large number of Syrian refugees upon arrival in Canada, they will be granted **up to six (6) months** from the time of their initial arrival in Canada to report all their settler's effects, including goods to follow, to the CBSA, and document their goods on form *BSF186, Personal Effects Accounting Document* (formerly B4) and, if required, form *BSF186A, Personal Effects Accounting Document (list of goods imported)* (formerly B4A).
- Syrian refugees will be provided with an information package, which will include a pamphlet explaining the settlers' exemption entitlement and the timeframe granted for reporting their personal and household effects to the CBSA, and blank copies of the BSF186 and BSF186A.
- This exception to the legislated reporting requirements applies solely to Syrian refugees arriving in Canada under this Government of Canada initiative and will be lifted upon its conclusion.

Actions Required by Border Services Officers:

- Officers processing Syrian refugees will defer the requirement for reporting and documentation of personal and household effects upon arrival in Canada.
- Officers will provide the information package, including copies of the BSF186 and BSF186A, to **all** arriving Syrian refugees.
- Should any refugees be prepared to report their settler's effects (they have

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the list of personal and household effects ready), officers will advise them to complete the goods report at the local CBSA office at a later time where they will be issued form BSF186 and, if required for goods to follow, form BSF186A.

- Syrian refugees will have to personally submit the list of their settler's effects, including a list of goods to follow, to a **local CBSA office** within six (6) months of landing in Canada.
- Officers at local CBSA offices receiving these lists will ascertain the person's landing date through system checks in the Global Case Management System and, if the report is within six (6) months of their arrival, issue the person with form BSF186 and, if required for goods to follow, form BSF186A.
- Officers will decline any requests for BSF186A for goods to follow after the six (6) month deferral period has elapsed.

Actions Required by Superintendents:

- Superintendents are responsible for ensuring officers read and understand the instructions outlined in this Operational Bulletin.

Contact Information:

Traveller Processing Unit, Traveller Operations Division, Border Operations Directorate, Operations Branch.

If you have any questions, please forward them through the regional Corporate and Program Services Divisions, which, if required, will then send an inquiry to the Traveller Operations Division's generic inbox: [CBSA-ASFC_Ops_Travellers-Voyageurs](#).

Approved by: Rick Fehr, A/Director, Traveller Operations Division

Effective Date: 2015-12-08

Updated: N/A

Additional bulletins:



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OPERATIONAL BULLETIN: OPS-2016-01

TITLE: Sanctions Against Syria on the Importation and Export of Goods

Date of Issue:	Mode(s):	Target Audience:	Area of Interest:
2016-01-13	All	National	All

Details:

On December 23, 2011, Canada announced new sanctions on Syria's Assad regime in response to its ongoing and escalating repression of Syrians. These measures prohibit all imports from Syria (with some exceptions as stated below), and the export to Syria of equipment, including software, for the monitoring of telephone and Internet communications.

***NEW: Please note that settler's effects, humanitarian effort-related goods, certain personal correspondence, food for human consumption and other items are exempted from these sanctions. More information on the Syria embargo may be found at the following link:

<http://www.international.gc.ca/sanctions/countries-pays/syria-syrie.aspx?lang=eng>

Information on the processing of settler's effects is contained in OPS-2015-15, Syrian Refugees – Processing of Settler's Effects.

Actions Required by Border Services Officers:

If an officer in the performance of his/her duties encounters sanctioned goods (personal or commercial), which are being either imported into Canada or exported from Canada to Syria the officer is to detain the goods on a BSF241, *Non-monetary General Receipt* (formerly K24) issued to the traveller until guidance is obtained from Global Affairs Canada (GAC) (formerly known as the Department of Foreign Affairs, Trade and Development).

The Legal Section of GAC can be contacted during normal business hours (Eastern Standard Time) Monday to Friday at

***Please note that although food for human consumption is not subject to GAC sanctions, it remains subject to regular Canadian Food Inspection Agency's (CFIA) import requirements. Officers are to consult CFIA AIRS to determine the eligibility of food for human consumption.

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Actions Required by Superintendents:

- Superintendents are responsible for ensuring officers read and understand the instructions outlined in this Operational Bulletin.

Contact Information:

Traveller Processing Unit, Traveller Operations Division, Border Operations Directorate, Operations Branch.

If you have any questions, please forward them through the regional Corporate and Program Services Divisions, which, if required, will then send an inquiry to the Traveller Operations Division's generic inbox: [CBSA-ASFC Ops Travellers-Voyageurs](#).

Approved by: Rick Fehr, A/Director, Traveller Operations Division

Effective Date: 2012-01-11

Updated: 2016-01-13

This bulletin replaces
OPS-2012-02

Additional bulletins:



OPERATIONAL BULLETIN: OPS-2016-04

TITLE: Seeking Re-Entry to Canada on Implied Status

Date of Issue:	Mode(s):	Target Audience:	Area of Interest:
2016-01-26	All	National	Port of Entry

Details:

The purpose of this Operational Bulletin (OB) is to provide clarification to Border Services Officers (BSOs) on the application of R183(5) and R190(3) of the *Immigration and Refugee Protection Regulations* (IRPR) regarding Temporary Residents (TR's) with implied status who have left Canada and are seeking re-entry.

TR's must apply to extend their period of authorized stay before it ends. If they have done so, their period of authorized stay as a temporary resident is extended by law until a decision is made as per R183(5) of the IRPR. Therefore, TR's are considered to have implied status as a temporary resident during this period.

TR's from Temporary Resident Visa (TRV) required countries, who are on implied status and are seeking re-entry to Canada following a visit solely to the United States or St. Pierre and Miquelon are still considered to be TRV exempt as per R190(3)(f)(ii) as their period of authorized stay is extended until a decision is made on the application regardless of whether they leave Canada. This interpretation of the legislation is consistent with the Federal Court decision of *De Brito v. Canada (Minister of Citizenship and Immigration)*.

As per the Program Delivery Instructions (PDI) the following is applicable to all implied status cases:

- If a temporary resident applies for renewal of their work or study permit and their permit expires before a decision is made, R186(u) and R189 (the right to continue working or studying under the same conditions pending a determination of their application for renewal) apply **only as long as the person remains in Canada**.
- TR's from TRV required countries, who are on implied status and are re-entering Canada following a visit solely to the United States or St. Pierre and Miquelon may apply for new work permit at the POE as they fall under the exception of R198(1) and are TRV exempt as per R190(3)(f).

For more information on how to process and counsel individuals seeking entry while on implied status, please refer to the section "**Implied Status and Travelling Outside Canada**" in the PDI.

References:

<http://reports.fja.gc.ca/eng/2004/2003fc1379.html>

Contact Information:

Traveller Processing Unit, Traveller Operations Division, Border Operations

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Directorate, Operations Branch.

If you have any questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Traveller Operations Division's generic inbox: CBSA-ASFC_Ops_Travellers-Voyageurs.

Approved by:

Rick Fehr, A/Director
Traveller Operations Division
Border Operations Directorate
Operations Branch

Effective Date: 2016-01-26

Updated: N/A

Additional bulletins:



OPERATIONAL BULLETIN: OPS-2017-32

TITLE: Integration of Primary Inspection Kiosks – Travellers Arriving Without a Stamp in their Passport

Date of Issue:	Mode(s):	Target Audience:	Area of Interest:
2017-09-06	All	BSOs	National

Details:

The purpose of this Operational Bulletin is to provide guidelines to border services officers (BSO) on how to process travellers who do not have a stamp in their passport.

The Canada Border Services Agency's (CBSA) stamping policy will evolve with the continued deployment of Primary Inspection Kiosks (PIK) at Canadian international airports.

At airports which utilize PIK, the CBSA is no longer systematically stamping the passports of all foreign nationals and will only be stamping the passports of travellers who require documentation and/or notation in their passport.

As a result, BSOs at land ports of entry (POE) may encounter travellers seeking entry to Canada who do not have a stamp in their passport indicating the date of their initial entry into Canada. Clients may also arrive at various CBSA offices requesting that their passport be stamped for administrative purposes.

Actions required by Border Services Officers in land mode:

- It is not necessary for a BSO at a primary inspection lane (PIL) to refer a traveller whose passport does not have an entry stamp to secondary, unless the BSO wishes to verify the traveller's status. If there are no other concerns present, BSOs at PIL should stamp the traveller's passport granting their entry to Canada.
- BSOs in secondary may verify the status of a traveller by consulting CBSA systems (including Global Case Management System, Integrated Customs Enforcement System and Integrated Customs System) to verify when the traveller was granted entry through PIK. As per regular procedures, BSOs in secondary should use their discretion as to the duration of stay granted, when stamping the passport.

Reference Section:

- PIK Stamping Policy:
- CBSA Stamping Policy:
- ENF 4 POE Examinations:

Contact Information:

Traveller Processing Unit, Traveller Operations Division, Border Operations Directorate, Operations Branch.

If you have any questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Traveller Operations Division's generic inbox: [CBSA-ASFC Ops Travellers-Voyageurs](#).

Approved by:

Lynne Lamarche, A/ Director
Traveller Operations Division
Border Operations Directorate

Effective Date: 2017-09-06

Updated: N/A

Additional bulletins:



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Operations Branch / Direction générale des opérations
Shift Briefing Bulletin / Bulletin d'information de quart de travail

Subject / Sujet:	Document Vetting in Telephone Reporting
Date / Jour:	November 3, 2015
Bulletin Number / Numéro du bulletin	N/A

Topic:

- To advise Telephone Reporting Centre (TRC) and verification office border services officers of the enhanced measures for document vetting for travellers reporting through the TRC.

Briefing notes:

- In November 2013, the Audit of the Telephone Reporting Program contained a recommendation that the Canada Border Services Agency (CBSA) develop a process to corroborate the citizenship and identity of persons seeking entry to Canada.
- One of the components of this recommendation is the collection of the identity document information provided by the traveller in the Telephone Reporting Centre System (TRCS) and validation of this information to ensure that the documents have not been reported as lost, stolen or fraudulent.
- On November 3, 2015, the CBSA is going to proceed with the release of the Field Operations Support System (FOSS) replacement package which will include a change to the TRCS application. With the change, the TRCS application will not allow the user to generate a passage for a traveller without a valid document.
- Programs Branch is in the process of issuing public notices through the various means (e.g., CBSA website, Twitter and Facebook accounts) to prepare the public to have their travel documents on hand when calling the TRC.

Actions required by TRC officers:

- Starting November 3, 2015, TRC officers will be required to request and record in the TRCS information related to identity documents utilized by travellers for entry into Canada. The document type and number must be entered into the Traveller Maintenance screen/Documents tab, which can be accessed directly from the Call Processing screen through the Add/Edit Passenger function. Please see the Attachment for system screen shots.
-
-
- Identity documents that will be accepted by the TRCS are:

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- Passports;
- Birth Certificates; and
- Driver's Licences.
- If a traveller does not have one a document readily available and they have not yet departed for Canada, they should be instructed to call back when they have the document
- If a traveller presents themselves without one of the above documents or does not have a document at all, the TRC officer will use a pre-approved, pre-determined "dummy" identification number as follows, to effect the processing of the passage in the TRCS:
 1. Document Type – select "Driver's License"
 2. Issuing Province/State – key "Ontario"
 3. Issuing Country – Canada
 4. Document Number – key "NA"
 5. Effective Date: key the current date
 6. Expiry Date: key in the expected date of arrival plus one day

Actions required by verification officers:

- Starting immediately, when responding to secondary referrals requested by the TRC, verification officers will take the opportunity to educate pilots and boaters of the necessity to have identity documents for all travellers on board the conveyance ready when calling the TRC to set-up the passage/report through the TRC.

Actions required by superintendents:

- TRC and verification offices' superintendents must ensure that front line officers follow the above outlined procedures.
- TRC superintendents will ensure that travel documents for all travellers are entered in the TRCS. They will also actively monitor the TRC operations and report any difficulties in maintaining the standard telephone queue times to Traveller Operations at: CBSA-ASFC OPS TRAVELLERS-VOYAGEURS.

Shift briefing bulletins can be found at:]

Issued by : Rick Fehr, Director, Traveller Operations Division



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Operations Branch / Direction des opérations
Shift Briefing Bulletin / Bulletin d'information de quart de travail

Subject / Sujet:	Processing of Syrian Refugees - Regular Processing, all Air POEs
Date / Jour:	December 8, 2015
Details: <p>The purpose of this shift briefing is to provide Frontline Officers with an overview of the process to resettle 25,000 Syrian refugees to Canada. Officers are asked to adopt a flexible approach when processing these refugees while at the same time exercising vigilance for persons seeking to exploit this facilitated process.</p> <p>The majority of the refugees will be arriving on chartered aircraft at two temporary POEs. The infield terminal (IFT) will be re-purposed for processing travellers at Pearson International Airport (PIA), and the aéroquai at Pierre Elliott Trudeau International Airport (PET) will be modified to process travellers.</p> <p>Some refugees will be arriving via regularly scheduled commercial aircraft. These passengers may arrive at any major airport serviced by CBSA.</p> <p>The procedures detailed below will provide further instructions for processing passengers arriving via the regular commercial air traveller stream.</p> <p>PIL and Secondary Processing:</p> <p>Travellers arriving via regularly scheduled flights will be directed to PIL and referred to secondary as per current standard operating procedures (SOP).</p> <p>Administering the Quarantine Act:</p> <p>As Screening Officers (SO) under the Quarantine Act, BSO's follow established health screening protocols by visually inspecting travellers for symptoms of illness or disease.</p> <p>BSOs will immediately notify a Public Health Agency of Canada (PHAC) Quarantine Officer (QO) if an ill traveller is identified at PIL whom the SO suspects of having a communicable disease.</p> <p>Travel Document(s):</p> <p>BSOs should be aware that persons arriving in Canada will be in possession of a Single Journey Travel Document (SJTD) issued by Immigration, Refugees and Citizenship Canada (IRCC) and, if still in their possession, their passport. This resettlement initiative will not only include Syrian Nationals but also Stateless Palestinians and Iraqi Kurds. It should be noted that SJTDs are not to be seized at the port of entry (POE). The document is to be retained by the refugee as an identification document in order to access in-Canada services.</p> <p>Biometric Verification:</p> <p>All refugees coming to Canada under this initiative must be biometrically verified. The biometric query can be accessed from the Secondary Referral Screen in ICS. You must select the individual to be queried from the list and open the referral. This will launch the application that will permit you to verify the applicant's biometrics.</p>	

Further information can be found on the *Atlas Welcome Refugees* page, under *resources*.

Processing of the Confirmation of Permanent Residence Document:

All arriving resettled refugees will be in possession of a permanent resident visa which will be affixed to the refugee's SJTD and the Confirmation of Permanent Residence Document. Officers will be required to process and "confirm" the status in GCMS as per current SOPs.

Interim Federal Health Program:

All arriving resettled refugees will be issued Interim Federal Health document. The Interim Federal Health document can be printed in advance. Detailed instructions on how to issue the Interim Federal Health document in GCMS is on the *Atlas Welcome Refugees* page, under *resources*.

Baggage Examination:

Baggage on regularly scheduled commercial flights will be handled as per usual by ground crew and will be collected by the travellers in the baggage hall. Luggage will be examined as per current SOPs.

Settlers Effects:

Due to the limited number of effects the resettled refugees can bring to Canada, the CBSA has taken a flexible approach in regards to their entitlements under tariff item 9807.00.00. Syrian resettled refugees will be allowed six months to complete their BSF186 (B4) and present it to a CBSA office for processing.

All travelers are to be provided with a copy of BSF 186 and BSF 186A.

See OB OPS-2015-15 for further processing instructions.

Currency Declaration:

Like all travellers, Syrian refugees are subject to the same reporting requirements outlined in the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).

Cross Border Currency Reporting (CBCR) forms (E677, E667 and E66) should be completed as per SOPs. Please refer to Chapter 2: Cross-Border Currency and Monetary Instruments Reporting Policy and Procedures within Part 2 of the CBSA EN Manual for additional guidance as needed (

Officers are encouraged to use common sense, discretion and good judgement in cases where the currency may not be reported or reported incorrectly on the CBCR forms. Many of these refugees may be traumatized, frightened of law enforcement and government officials, and fear that the currency will be taken from them if they declare it.

For the purposes of administering the PCMLTFA, officers are encouraged to use the same benefit of the doubt as is utilized when enforcing the Customs Act.

In cases where further intervention is warranted, officers should keep in mind that due to the violent nature of

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the humanitarian and economic crisis, some of the refugees may not be able to provide a paper trail or other evidence that points to the legitimacy of the currency. Officers should be aware that Intelligence Officers will also be present in the processing area. **BSOs are strongly encouraged to consult with them or the superintendent on duty before conducting seizure action.**

CBSA policy states that the moment currency is seized, it becomes property of the Crown and since the person no longer owns the property, the seizure penalty may not be withdrawn from the currency that is seized. In these circumstances, if the refugee does not have a valid credit card or other method of paying the release penalty, the officer may use discretion and allow the penalty to be paid from the seized funds. This action should be documented in the officer's notebook as well as the narrative report.

The CBSA Operational Bulletin website can be found at:

Issued By: Rick Fehr, A/Director, Traveller Operations Division



Operations Branch
Shift Briefing Bulletin

Subject :	Processing travellers with a special/diplomatic Canadian passports
Date :	July 28, 2017

Details:

The purpose of this shift briefing is to provide clarification to Border Services Officers (BSOs) as to how to process Canadians travelling on a special or diplomatic passport.

The purpose of the special and diplomatic passports issued to Canadian government officials is to confirm a person's identity and role within the Government of Canada.

Special passports have a green cover and issued to persons holding office, such as Members of Parliament, Senators, Members of Provincial Cabinets and to persons employed by the Government of Canada in a non-diplomatic capacity, such as members of the military and their families, who are travelling on an official mission or to a foreign assignment.

Diplomatic passports have a red cover and are issued to Government of Canada officials and diplomats, as well as to representatives and delegates of the Government of Canada who are travelling to international governmental organizations and international conferences of a diplomatic nature.

Special and diplomatic passports can be used by the holder to travel at any point during their mission or assignment abroad. These passports should be accepted by BSOs as a valid travel document when the passport holder is travelling to Canada for business or personal reasons. The holder of the special/diplomatic passport is **NOT** required to carry a regular (blue) passport.

For more information on [Canadian issued Special/Diplomatic Passports](#), please consult IRCC's website.

Actions required by BSOs:

- Process travellers holding special/diplomatic passports using the passport provided.

Actions required by Superintendents:

- Superintendents will provide guidance and support to the BSOs.

Inquiries:

If you have any further questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Port of Entry Operations' generic inbox: [CBSA-ASFC_Ops_Travellers-Voyageurs](#).

Issued by:

Traveller Operations Division
Border Operations
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**Operations Branch
Shift Briefing Bulletin**

Subject:	Procedures for Declared Cannabis for Travellers Reporting through the Telephone Reporting Centre
Date:	October 17th, 2018

Details:

This bulletin is to inform officers working at the Telephone Reporting Centre (TRC) and the verification offices of new procedures pertaining to travellers declaring cannabis.

Starting on October 17th, 2018, TRC officers will be required to ask the pilot/boat operator/master the following question relating to cannabis during the first call:

Are any persons on board bringing cannabis or goods containing cannabis into Canada?

In addition, the TRC EPAS telephone system is being programmed with a message with respect to the cannabis importation question.

If a positive cannabis declaration is made, TRC officers will advise the traveller that it is illegal to import/export cannabis into/out of Canada.

However, if the traveller is calling in advance of their arrival (general aviation, trusted traveller private and corporate aircraft, and private boats), TRC officers will advise the traveller that it is illegal to import/export cannabis into/out of Canada and instruct the caller not to bring their cannabis to Canada with them.

Declarations of cannabis importation:

All declared importations of cannabis will result in a mandatory referral to secondary.

If the traveller is reporting cannabis upon arrival at a reporting site in Canada (non-member private boats), the responsible verification office will be contacted to meet the traveller to take possession of the cannabis.

It is the responsibility of the verification office to attend the arriving vessel, aircraft, snowmobile or vehicle.

Note: The Regions are responsible for making sure that all verification offices are reachable on a 24/7 basis.

In instances where the verification team is unable to attend, the TRC officer will transfer the caller to the verification office and the verification office will apply the below two-tiered approach:

- 1) The officer will first contact their local responding police agency to request that they meet the traveller on behalf of the CBSA to take possession of the declared cannabis.
- 2) Should the local responding police agency also not be able to attend the site, the verification officer will direct the person to proceed to the nearest designated location where the verification officers are able to meet the conveyance in order to forfeit the cannabis.

The TRC officer will also enter a record of the traveller's non-compliance into the Telephone Reporting Centre System (TRCS) system (by adding an entry in the Intelligence tab of the Traveller Maintenance window).

In support of the monitoring and reporting framework developed by the Enforcement and Intelligence Programs Directorate's Policy Division, the notation of "declaration of cannabis" is imperative in the verification

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notes of the TRCS verification request.

Actions required by BSOs:

- TRC officers will make a referral in the TRCS and call the responding verification office to advise of the mandatory referral.
- TRC officers are required to notate "declaration of cannabis" in the verification notes section of the TRCS verification request document. **Note:** It is imperative that no abbreviations or word shortcuts be used in notating the "declaration of cannabis." This is necessary for the purpose of automated queries of the passage notes field to compile statistics on cannabis reports.
- This shift briefing must be read in conjunction with the Operational Bulletin PRG-2018-58.

Actions required by Verification Offices:

- It is essential that the mandatory examination be conducted at the place of arrival of the conveyance/traveller. As such, verification offices will make every effort to attend the arrival site for the purposes of detaining the cannabis or goods containing cannabis, or verifying the Health Canada authorization.
- Please note that under no circumstances should the verification office be un-reachable. All verification offices are required to have a system in place to ensure that the TRC can reach them and advise of referrals on a 24/7 basis.
- The verification office will advise the TRC in circumstances when it is unable to attend the arrival site and the verification officers will implement the above outlined two-tiered approach.
- The verification office is responsible for following the instructions for secondary examination process outlined in Operational Bulletin PRG-2018-58.

Actions required by Superintendents:

- TRC and verifications office superintendents must ensure that officers follow the above-outlined procedures.

Inquiries:

If you have any questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Traveller Operations Division's generic inbox: CBSA-ASFC_Ops_Travellers-Voyageurs.

References:

- Operational Bulletin PRG-2018-58

Issued by:

Traveller Operations Division
Border Operations Directorate
Operations Branch



OPERATIONAL BULLETIN: OPS-2018-06

TITLE: Importation of Cannabis

Date of Issue:	Mode(s):	Target Audience:	Area of Interest:
2018-03-29	All	National	Traveller

Details:

- The *Controlled Drugs and Substances Act* (CDSA) currently includes cannabis as well as its preparations and derivatives as Schedule II narcotics.
- The CDSA prohibits the personal importation or exportation of cannabis, prescription or otherwise, unless a personal exemption under section 56 of the CDSA has been issued by Health Canada.
- At this time, the only known Health Canada personal exemption letters are for Charlotte's Web branded cannabis oil (see [PRG-2017-28](#)).
- A separate Operational Bulletin will follow with updated guidance, once Bill C-45, an *Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*, receives Royal Assent and becomes law.

Actions Required by Border Services Officers:

- Border Services Officers will continue to have the discretion to either seize or have the cannabis forfeited depending on the circumstances surrounding the case.

Declared Cannabis:

- If a traveller declares the cannabis in their possession but does not have an exemption letter from Health Canada, the cannabis should not be seized as there is no violation of the *Customs Act* (i.e. non-report or inaccurate information).
- The declared cannabis should be documented as a forfeiture in ICES.
- The traveller should not be arrested for declaring cannabis.

Undeclared Cannabis:

- If undeclared cannabis is seized, the officer will continue to follow the CBSA policy outlined in [Part 2, Chapter 6 of the EN Manual](#).
- In the presence of mitigating factors, officers may use their discretion to not seize the cannabis. In such cases, officers may record the cannabis as a forfeiture in ICES.

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- Arrest is at the discretion of the officer. As long as the officer is satisfied that there is not likely to be any criminal charges laid (small, personal use quantity), the need for an arrest would be diminished, as the purpose of the arrest and ensuing right to counsel and caution is to ensure that any statement made by the individual is admissible in court.

Recording Forfeitures of Cannabis in ICES:

- If the officer decides to have the cannabis forfeited, it should be recorded in ICES to generate the HC/SC3515 form required for transfer to police and disposal.
 - In ICES, the BSO would select *Forfeited Narcotics/Controlled/Restricted Drugs/Chemicals* as the allegation and then select *Narcotics/Drugs/Chemicals* as the commodity.
- No terms of release would apply on the conveyance in these cases since there has been no seizure of the conveyance. A forfeiture does not generate an enforcement action in ICES and is not subject to the normal recourse process.

Contact Information:

Traveller Processing Unit, Border Operations Directorate, Operations Branch.

If you have any further questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the [Traveller Operations](#) generic inbox.

Approved by:

Lynne Lamarche, Director
 Traveller Operations Division
 Border Operations Directorate
 Operations Branch

Effective Date: 2018-03-29

Updated: N/A



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OPERATIONAL BULLETIN: OPS-2014-04

TITLE: Outbound Cross Border Currency Referrals from External Entities

Date of Issue:
2014-04-01

Mode(s):
Air

Target Audience:
National

Area of Interest:
Traveller

Details:

- The purpose of this Operational Bulletin is to advise Superintendents and Border Services Officers (BSOs) about cross border currency referrals from external entities, such as CATSA screening at the eight major airports.
- These referrals will assist the CBSA in achieving its role in enforcing the *Proceeds of Crime (Money Laundering) and Terrorism Financing Act* (PCMLTFA).
- Regional processes have been implemented to allow outside agencies such as CATSA, local police, or the Airport Authority to inform the CBSA of travellers that may be in contravention of the PCMLTFA .
-
- A traveller merely going through a screening point (i.e. CATSA) does not mean they have reached the "point of no return".
- At any point up to the jetway, an officer may establish point of finality through questioning. Once a traveler makes a declaration (even if it is a nil declaration) point of finality is met.

Actions required from Superintendents:

- Receive a call from an external source – Identify the source of the information and the location of the traveller in question.
-
- Compile all results of the referral on a tracking sheet and forward the information on a monthly basis to the responsible Regional Program Officer.

Actions required from BSOs:

- BSOs will follow the Standard Operating Procedures for Outbound Air Examinations.
- Provide Superintendents with the results of the referral.
- Reportable results:
 - Was passenger present when CBSA arrived?

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- o Did the passenger already declare currency or monetary instruments?
- o Does the passenger possess \$10,000 CAD or more?
- o Was a currency declaration made prior to CBSA attending / did the BSOs accept a declaration while attending?
- o Enforcement Action Taken? If applicable, include K19/ICES number, whether CBSA Intel/RCMP were contacted.

Actions required from Regional Program Officers:

- Compile regional tracking sheets and send them to Traveller Operations at

Contact Information:

Traveller Processing Unit / Traveller Operations Division

Any questions regarding this bulletin should be directed to the Traveller Operations Unit via email at

Approved by:

Denis R. Vinette
Director General, Border Operations

Effective Date: 2014-04-01

Updated: N/A



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Badge Policy

May 10, 2018

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returning to their duties. The completion of Controlled Assets Form BSF208 (PDF, 2,160 KB) is mandatory when a badge is re-issued to a badge holder; and

9. Ensuring that the cost of badge encasements are paid for by the region, the district or the division (where the employee meets the requirements), see Section 10 of this policy.

8.5 Corporate and Program Services Directors

Corporate and Program Services Directors are responsible for:

1. Ensuring compliance with this policy, as well as the Standard for Controlled Assets (PDF, 494 KB) issued by the Security and Professional Standards Directorate (SPSD);
2. Acting as a liaison between their region and headquarters when issues are identified which may require modification to the policy and/or guidelines; and
3. Ensuring that the cost of badge encasements are paid for by the region, the district or the division (where the employee meets the requirements), see Section 10 of this policy.

8.6 Security and Professional Standards Directorate (SPSD)

The SPSD has been delegated the responsibility of custodian for badges, and are responsible for:

1. Procuring and quality check of the badges when received;
2. The storage and controlling of badges;
3. Delegating Regional Security the responsibility for controlling badges in their region;
4. Developing and maintaining the Standard for Controlled Assets (PDF, 494 KB) to support proper accounting and control of badges;
5. Maintaining national control records of all badge transactions (receipt, issuance, return, decommission, repair, destroyed, lost or stolen, etc.);
6. Making arrangements for the destruction of decommissioned badges;
7. Conducting audits of regional inventories to ensure accuracy and compliance with associated policies, guidelines and procedures; and
8. Liaising with the Uniform and Equipment Unit regarding policy and guidelines associated with all matters concerning the technical specifications for the acquisition of badges.

8.7 Regional Security Officials

Regional Security Officials are responsible for:

1. Issuing and controlling badges;
2. Coordinating the completion of Controlled Assets Form BSF208 (PDF, 2,160 KB) when badges are issued or returned;
3. Ensuring that the BSF208 (PDF, 2,160 KB) is completed correctly, such as for transfers, encasement of badges, repairs, etc.;
4. Forwarding the original signed copy of a Controlled Assets Form BSF208 (PDF, 2,160 KB) to SPSPD and retaining a copy for inclusion in each badge holder's regional security file;

5. Ensuring SPSP is advised of all cases when badge holders transfer to another region and have been authorized to keep their existing badge. All transfers require the Regional Security office to ensure the completion of Controlled Assets Form BSF208 (PDF, 2,160 KB) to send the original Form BSF208 (PDF, 2,160 KB) to SPSP, and to send a copy to the Regional Security office where the badge holder will be transferred;
6. Forwarding all badges requiring decommissioning that have been used in the commission of a criminal offence or that cannot be repaired, to SPSP with appropriate documentation and update the database accordingly. Completion of Controlled Assets Form BSF208 (PDF, 2,160 KB) is mandatory. The original Controlled Assets Form BSF208 (PDF, 2,160 KB) and the badge must be sent to the SPSP for destruction;
7. Making arrangements to have badges encased if conditions stipulated in Section 10 of this policy are met;
8. Re-commissioning of badges (with the exception of badges qualifying for encasement in Section 10 or badges used in the commission of a criminal offence) to qualified badge holders as stipulated in Section 5 of this policy;
9. Reporting to SPSP all incidents concerning the loss, theft, mutilation or destruction of badges by forwarding a Security Incident Report (Form BSF152 (PDF, 634 KB) and BSF208 (PDF, 2,160 KB)) to SPSP;
10. Making arrangements for the repair of broken badges and the issuance of temporary badges to badge holders;
11. Maintaining regional control records of all badge transactions (receipt, issuance, return, decommission, repair, destruction, loss or theft etc.); and,
12. Participating in audits coordinated by SPSP.

8.8 Manager of Personnel Safety and Physical Security

The Manager of Personnel Safety and Physical Security at the Main Campus - Rigaud is responsible for:

1. Issuing and controlling badges;
2. Coordinating the completion of Controlled Assets Form BSF208 (PDF, 2,160 KB) when badges are issued or returned;
3. Forwarding the original signed copy of Controlled Assets Form BSF208 (PDF, 2,160 KB) to SPSP and a copy of the BSF208 (PDF, 2,160 KB) to the Regional Security office where the badge holder will be deployed;
4. Ensuring SPSP is advised of all cases when badge holders from Main Campus - Rigaud transfer to another region and have been authorized to keep their existing badge. All transfers require the Manager of Personnel Safety and Physical Security at the Main Campus - Rigaud to ensure completion of Controlled Assets Form BSF208 (PDF, 2,160 KB) to send forward the original BSF208 (PDF, 2,160 KB) to SPSP and a to send copy to the Regional Security office where the badge holder will be transferred;
5. Forwarding all badges requiring decommissioning that have been used in the commission of a criminal offence or that cannot be repaired, to SPSP with appropriate documentation and update the database accordingly. Completion of Controlled Assets Form BSF208 (PDF, 2,160 KB) is mandatory. The original Controlled Assets Form BSF208 (PDF, 2,160 KB) and the badge must be sent to the SPSP for destruction;

issued the badge. Completion of Controlled Assets Form BSF208 (PDF, 2,160 KB) is mandatory. Badge holders may qualify to have their badge encased and presented to them in recognition of their service. See Section 10 of this policy for further information on encasement of badges.

9.2 Assignments

1. Badge holders on assignment to positions within the CBSA, that do not require performing duties described in Section 5 or positions outside the CBSA for a period of **less than 4 months**, may **retain** their badge.
2. Badge holders on assignment to positions within the CBSA that do not require performing duties described in Section 5 or to positions outside the CBSA for a period of **4 months or more**, must **surrender** their badge before beginning their new assignment. The badge must be surrendered to CBSA Regional Security or the Manager of Personnel Safety and Physical Security at the Main Campus - Rigaud. Completion of Controlled Assets Form BSF208 (PDF, 2,160 KB) is mandatory.
3. In both scenarios (1 & 2) mentioned above, the badge would be re-issued to the badge holder when the badge holder returns to a qualified badge holder position within the CBSA at the end of the secondment period.
4. The storage of surrendered badges will be the responsibility of Regional Security or the Manager of Personnel Safety and Physical Security at the Rigaud Campus.

9.3 Extended Leave

Badge holders on extended leave for a period of **4 months or more** must surrender their badge to Regional Security or the Manager of Personnel Safety and Physical Security at the Main Campus - Rigaud. Completion of Controlled Assets Form BSF208 (PDF, 2,160 KB) is mandatory.

9.4 Resignations in Good Standing

Badge holders who resign in good standing from the CBSA must surrender their badge to Regional Security or the Manager of Personnel Safety and Physical Security at the Main Campus - Rigaud at the time of their departure. Completion of the Controlled Assets Form BSF208 (PDF, 2,160 KB) is mandatory. Badge holders may qualify to have their badge encased and presented to them in recognition of their service, see Section 10 of this policy for further information on encasement of badges.

9.5 Dismissal

Badge holders who are dismissed or resign from the CBSA due to misconduct must surrender their badge to the Agency **at the time of their departure**. Completion of the Controlled Assets Form BSF208 (PDF, 2,160 KB) is mandatory. Badge holders who have been dismissed or who resign due to misconduct will **not** be entitled to have their badge encased under any circumstance.

11.2 Stolen, Lost, or Destroyed Badges

1. Badge holders must immediately report the loss, theft, mutilation or destruction of their badge to their immediate supervisor. In accordance with Chapter 15: Reporting of Security Incidents, the immediate supervisor will ensure that the badge holder completes a Security Incident Report (Form [BSF152 \(PDF, 634 KB\)](#)) and a Controlled Assets Form [BSF208 \(PDF, 2,160 KB\)](#).
2. Badge holders are also responsible for reporting a lost or stolen badge to the police and obtaining a police report number. The police report number must be identified on the Security Incident Report (Form [BSF152 \(PDF, 634 KB\)](#)).
3. Further information on [Standard for Security Incident Reporting \(PDF, 501 KB\)](#) may be found on Atlas.
4. To be issued a replacement badge, badge holders must complete a Controlled Assets Form [BSF208 \(PDF, 2,160 KB\)](#).
5. Badge holders may be subject to disciplinary action if it is determined that a badge is damaged or lost due to carelessness or neglect.

11.3 Damaged Badges and Repair

1. When a badge is damaged and requires repair, it is the responsibility of the respective region to arrange for the repair.
2. A temporary badge will be issued to the badge holder until such time as the necessary repairs are completed.
3. Badge holders are responsible for the completion of Controlled Assets Form [BSF208 \(PDF, 2,160 KB\)](#) and to submit the damaged badge to Regional Security or the Manager of Personnel Safety and Physical Security of the Main Campus - Rigaud who will arrange for the repair and issuance of a temporary badge.
4. The supplier provides a warranty (usually one year) for repair due to normal usage defects such as problems with the closure mechanism, colour defects or premature wear. It does not cover breakage due to misuse. All costs associated with repairs will be the responsibility of the respective region following this one year period.
5. Temporary badges must be returned to inventory once repaired badges are re-issued to badge holders. Completion of Controlled Assets Form [BSF208 \(PDF, 2,160 KB\)](#) for the return of the temporary badge and the re-issuance of the holder's original badge is mandatory.

11.4 Decommissioning of the Badge

1. When it has been determined that a badge cannot be repaired, is lost or stolen, Regional Security or the Manager of Personnel Safety and Physical Security, Main Campus - Rigaud, will arrange with Security and Professional Standards Directorate (SPSD) for the possible destruction (as per Section 8 of this policy) and decommissioning of the badge number. Completion of Controlled Assets Form [BSF208 \(PDF, 2,160 KB\)](#) is mandatory.
2. When it has been determined that a badge (including an encased badge) has been used for unlawful purposes, the badge will be sent to SPSP to be decommissioned and destroyed. Completion of Controlled Assets Form [BSF208 \(PDF, 2,160 KB\)](#) is mandatory.

